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CONVEYANCER'S NOTEBOOK

REPORT OF THE COMMITTEE ON LAND CHARGES

The Roxburgh Committee on Land Charges was appointed in October, 1954, to consider: (i) the position arising after 1955 with regard to land charges, for the purchaser under an open contract will only get a thirty years' title but will be bound by all properly registered land charges even though prior to the root of title; (ii) the judgment of Eve J. in *Re Forsey and Hollebone's Contract* [1927] 2 Ch. 379; and (iii) whether amendments should be made in the law affecting the liability of lessees in respect of land charges registered against their landlords. The report (Cmd. 9825, H.M. Stationery Office, price 1s.) does not make very hopeful reading. The committee take the view that for a purchaser to be bound by a land charge of which he did not, and could not, have notice "cannot be defended on any basis of jurisprudence," but that the problem is insoluble until it solves itself upon completion of the registration of all titles to land. They do, however, take the view that restrictive covenants should cease to be capable of registration. While most practitioners will agree that little harm can come of taking restrictive covenants off the register, it is felt that the committee took too pessimistic a view of registration against the land instead of against names, for, although it might prove impracticable to re-register existing charges, is there any reason why this should not be done in future? At any rate it would put a limit on possible injustices.

One suggestion that was made, and rejected, was that a vendor should be liable in damages if a purchaser suffered loss through an undisclosed charge registered before the root of title. The

committee felt that this would be unjust to an innocent vendor. But why should a man sell some land as unencumbered for £4,000 and then, when it turns out to be encumbered, be entitled to retain the full £4,000? There has been a failure of consideration *pro tanto*. We know that covenants for title have proved a delusion in most cases in the past, but is the fact that injustice has gone on for many generations a reason for perpetuating it?

Apart from the minor recommendation mentioned above and one to take options for renewal or purchase contained in leases off the register, the committee's only substantive recommendation is to press on with compulsory registration.

It will be remembered that in *Re Forsey and Hollebone's Contract* Eve J. took the view that a person who contracted to purchase land was bound by all registered land charges whether disclosed by the vendor or not. In the particular case, the land charge in question was a resolution for a planning scheme and this was held not to be a charge anyway. When the case went to the Court of Appeal Eve J.'s judgment was upheld on this ground and the court expressed no opinion on the former ground. The committee take the view that Eve J.'s judgment would be followed by any judge of first instance and, being of the opinion that it is unjust, recommend that, except in the case of local land charges, the rule should be abolished. They further think that any provision seeking to fix the purchaser in advance with notice of any charges in fact unknown to the purchaser but which may be registered, should be void. Few will differ from this recommendation.

With regard to the rule in *Patman* v. *Harland* and the question of title on the grant of leases generally, it has always seemed to us that the law is rather unrealistic. The practice in nearly every case is for the lease to be granted without any preliminary contract and the lessor can rarely be persuaded to disclose his title, though, where it is registered, he is usually far less reluctant. *Patman* v. *Harland*, it will be remembered, decided that a lessee was deemed to have notice of everything of which he would have had notice had he investigated the lessor's title. The rule was abolished by the Law of Property Act, 1925, s. 44 (5), but showed considerable vigour, for in *White* v. *Bijou Mansions* [1937] Ch. 610 Simmonds J. held that the rule still applied to registered land: what was registered against the freehold title bound the lessees; and, by parity of reasoning, the rule still applies to matters registered under the Land Charges Act, 1925, which leaves precious little to which the rule even today does not apply. The committee recommend the restoration of the rule in *Patman* v. *Harland*, but realise that either way there may be injustice. In the case

of registered land, therefore, they suggest that a prospective lessee or assignee of a lease should have the right to inspect the charges register of the freehold or any superior leasehold title. In other jurisdictions, land registers are open to public inspection and there are considerable arguments in favour of this, but if the public is not yet ready to go so far, the right for a lessee to see his lessor's title will be generally welcomed.

Report on H.M. Land Registry for 1955–1956

During the year covered by the report (H.M. Stationery Office, price 2s.) the delay in registration was worse even than in the previous year, but since the issue of the report there has been a considerable improvement and the prospect for the future appears to be good. Two figures in the report must give considerable satisfaction to the Chief Land Registrar: first, the number of first registrations in non-compulsory areas has risen to 3,202 as against 2,926 for the previous year and 2,615 for 1953; and, secondly, the average cost per transaction is 22s. 8d., a decrease of 1s. 4d. over —or should we say under—the previous year. The number of transactions in a compulsory area merely shows the state of the market in land; the number of first registrations in non-compulsory areas shows what persons who have a complete choice in the matter think of the services offered. We are glad to see that, despite the great increase in business, the hint in last year's report that voluntary registration might have to be stopped is not repeated. With regard to the cost, the report adds that the continual increase in staff and other costs must ultimately result in a substantial rise in the cost of transactions. Obviously, the increase in transactions is bound to lead to increases in staff and overheads, but must this necessarily lead to a rise in the cost per transaction? What the customer is more concerned with is fees: as land rises in value the amount of fees paid per transaction in general rises, and if this covers any increased costs incurred there is not likely to be any complaint, but the report indicates that in the year 1956–1957 there may be a drop in revenue which will require to be made good—at the present moment the Registry is working on about a $12\frac{1}{2}\%$ profit margin. The rest of the report calls for no special comment.

H.M. Land Registry—Tunbridge Wells Office

H.M. Land Registry have set up an office at Tunbridge Wells. It is not a district registry but merely an offshoot of the London

Registry. The Chief Land Registrar announces that, to relieve congestion at the London Registry, filed plans and index maps relating to the County Boroughs of Hastings, Eastbourne and Oxford and the Counties of Sussex and Hampshire were removed to the Tunbridge Wells office on October 15 and that from that date the registration of title work arising from those areas has been and will be done there. Personal searches of the registers and index maps may be made at the Tunbridge Wells Office but, where it is desired to inspect these records in London, they will be made available at the London Registry at short notice.

The address of the Tunbridge Wells office is: The Public Offices, Forest Road, Hawkenbury, Tunbridge Wells, Kent.

Landlord and Tenant Act, 1954

Notice to Quit and Notice to Terminate

Messrs. Blundell and Wellings expressed the view, at p. 276, *ante*, that there is nothing to be found in the Landlord and Tenant Act, 1954, which will interfere with the operation either of a notice to quit determining a periodic tenancy or a notice exercising a right to break a lease for a term of years. Mr. J. J. Mugford has written to say that he does not consider this view correct, nor does he think the authorities cited really assist. "The statement, at p. 276, that 'the point directly arose' in the case of *Castle Laundry, Ltd.* v. *Read*," he says, "is surely incorrect, as in that case the common law notice to quit was served before the Act had been passed, which is a very different case from that which your contributors are discussing, the effect of such a notice after the passing of the Act.

"I also consider that the report in the article of the case of *Milletts* (*Victoria*) v. *Northley House* should have made it clear that, as appears in the *Estates Gazette* report, the claim that the common law notice to quit was an effective notice was apparently dropped by the landlord, since, if anything, this goes against the views previously advanced by your contributors as to the effectiveness of such a notice to quit."

Mr. Wellings has replied: "We have nowhere suggested in our article that a common law notice to quit will determine the *tenancy*; obviously it will not: see section 24. We have taken the trouble to point out that the Act distinguishes between determining the contract and determining the tenancy or estate. The Act is designed to provide security of tenure and a right to apply for new

tenancies of business premises: why on earth should it interfere with determination of the *consensus* when it does not need to do so, since the *estate* continues under section 24?

"As to the *Castle Laundry* case, the important point is that the common law notice *expired* after the Act came into force. If Mr. Mugford is suggesting that in that case the fact that the common law notice was served before the Act was passed or came into force affected the decision, how does he explain *Orman Bros.* v. *Greenbaum*?

"The reference to *Milletts* (*Victoria*) v. *Northley House* on p. 278 was not a 'report.' [It has since been reported in [1956] J.P.L. 744 and is noted *post*, p. 507.] Nor is it true to say that the claim that the common law notice was an effective notice was apparently dropped by the landlords. The point was never taken. The landlords never asserted that the common law notice determined the tenancy; they merely asserted that the service of the common law notice enabled them, under section 25, to determine the tenancy before its normal date of expiration by a *statutory* notice to terminate which was served at the same time. At the trial they did not press the point because, having regard to section 25 (3) (a), they were successfully able to rely on the statutory notice alone. After judgment the tenants asked for a declaration that the common law notice was void. The judge said that, if the landlords would concede that the common law notice did not determine the tenancy under the *Act*, *i.e.*, under section 24, he would give judgment for the landlords with costs. The landlords readily made this concession because they had never contended otherwise.

"In *Milletts*' case the landlords would not have served two notices had they not desired to make themselves the 'competent landlord' *vis-à-vis* the subtenants. By an error, they had overlooked the fact that they were already the 'competent landlord' *vis-à-vis* the subtenants. The statutory notice by itself would therefore have been sufficient. Had they not already been the 'competent landlord' *vis-à-vis* the subtenants, in order to bring themselves within section 44, they would, it seems, have had to serve a common law notice on the tenants: a statutory notice under section 25 is not a 'notice to quit' as defined by section 69 and would not by itself have been sufficient for this purpose."

We have dealt with this point at some length as it is one of practical importance and one on which there seems to be a good deal of confusion. If the views expressed by Messrs. Blundell and Wellings are correct the Act can be applied consistently to all circumstances; if the views expressed by Mr. Mugford are correct there will be many cases of difficulty and hardship. If A is the

freeholder, B a lessee and C a sub-tenant in possession under a periodic tenancy, on Mr. Mugford's view, C's periodic tenancy could be terminated in certain circumstances by a statutory notice served by A, a person having no relationship to C. Again, many options to break would be rendered valueless. For example, if M is a freeholder, N a lessee for a term and O a sub-lessee of part, and M had reserved a right to break on six months' notice and N, to protect himself, had reserved a right to break at the same time on five months' notice, M might exercise his right, but N would be unable to do so. N might then find himself paying a higher rent, none of which he could pass on to O. On Messrs. Blundell and Wellings' construction, although there might be a short time lag between the raising of N's rent and the raising of O's, there would not be the wholly unnecessary hardship resulting from Mr. Mugford's construction: the Act was designed to give security of tenure, not to peg rents.

The other confusion that seems to be common is one exemplified by the facts of *Milletts*' case. Some landlords seem to think it necessary in all cases to serve a notice to quit as well as a statutory notice. In some cases, as where the lessee has a lease for a fixed term, this is positively wrong; in other cases, as where the lessee has a periodic tenancy, it is unnecessary; but there may well be others, as where an option to break is being exercised, where both notices are essential.

Solicitors' Remuneration on Compulsory Purchase

On a compulsory acquisition of land the vendor's solicitors' costs are governed by Schedule II of the Solicitors' Remuneration Order in the case of unregistered land, though by the scale in the case of registered land. The Lord Chancellor, in making the Solicitors' Remuneration Order, 1956, intended, from December 1, to put compulsory purchases of unregistered land on precisely the same footing as other sales and purchases of unregistered land so that the vendor's solicitor could charge the scale fee. The Order was duly laid before Parliament, but a prayer for its annulment was put on the Order Paper, and a resolution annulling the Order was passed on November 26, so that Schedule II continues to apply in the case of unregistered land.

Land Registry Fees on Registration of Charges

We drew attention in the last issue (*ante*, p. 349) to the Land Registration Fee Order, 1956, but practitioners are apparently still

paying wrong fees and the Chief Land Registrar has issued the following notice:—

Land Registry Notice

Registration Fees

"Since the 1956 Fee Order was introduced on August 1, 1956, there have been many instances where a half fee has been paid in error for the registration of charges lodged with applications for first registration. It is emphasised that under the 1956 Fee Order it is only in respect of charges accompanying *transfers* for value of registered land that a fee at the half rate is payable. In the case of charges lodged with applications for first registration the position continues that no fee is payable in respect of those charges.

"Overpayment or underpayment of fees involves the Registry and Solicitors alike in much fruitless labour. The Chief Land Registrar would be grateful therefore for the co-operation of the profession in ensuring that the correct fees are paid on all occasions."

THE HOUSING ACTS AND THE PRIVATE PRACTITIONER

By J. F. Garner, ll.m., Solicitor

Twenty or so years ago, the private conveyancer would have been concerned very little, if at all, with the provisions of the Housing Acts; now the complicated sections of some twenty-five statutes that may be referred to by this title, may be of direct concern to many of his clients. A large proportion of this legislation is, perhaps fortunately, concerned with administrative details, but many of the sections give powers of control over landowners to local authorities (*a*) and so should be understood, at least in outline, by private practitioners.

Besides its main purpose of enabling local authorities to provide and manage houses for letting (originally only to members of the "working classes" (*b*)), the housing legislation imposes on local authorities the duty from time to time to inspect their respective districts with a view to ascertaining which, if any, houses are unfit for human habitation; where such houses are found, it then becomes the duty (*c*) of the housing authority to take some kind of statutory action in respect of that house (*d*) or houses. In addition to the different kinds of statutory action available, which are discussed below, housing authorities are given power to acquire land, either by agreement or compulsorily, for housing purposes. Further, in certain circumstances, the local authority may be empowered to fix a maximum rent at which a particular house may be let, or a maximum selling price. In all these ways the

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(*a*) In the context of housing law, "local authority" means the council of a borough (including a county borough—if such a proposition needs an authority, see *Steele* v. *Minister of Housing and Local Government* (1956) *The Times*, July 6), urban district or rural district.

(*b*) The reference to "working classes" was deleted from most of the sections of the Housing Acts, by the Housing Act, 1949; by that time the expression had become "quite inappropriate to modern social conditions": *per* Denning J. (as he then was) in *Green* v. *Minister of Health* [1948] 1 K.B. 34.

(*c*) Most of the sections of the Housing Act, 1936, impose express duties on the local authority to take action when the specified circumstances are found to exist.

(*d*) "House" is not authoritatively defined in the Housing Acts, although it is given an extended meaning to include appurtenances, in s. 188 (1) of the 1936 Act. In *Housing Law and Practice*, by A. N. Schofield and the present writer, it is suggested (2nd ed., p. 13) that "house" should be construed as meaning a building (or part thereof) used or capable of being used for human habitation, whether or not it is fit for that purpose.

housing authority may impinge on the liberty of the individual landowner to use his house as his own. We now propose to consider these several powers *seriatim*.

A. Unfit and Overcrowded Houses

Since the passing of the Housing Repairs and Rents Act, 1954, "unfitness" for the purposes of the Housing Acts has been defined with some exactitude, for it is provided by section 9 of that Act that, when determining whether or not a particular house is "unfit," regard must be had to its condition in respect of repair, stability, freedom from damp, natural lighting, ventilation, water supply, drainage and sanitary conveniences, and the facilities for storage, preparation and cooking of food and for the disposal of waste water; and a house is to be deemed unfit if, and only if, it is so far defective in one or more of these matters that it is not reasonably suitable for occupation in that condition (*e*). This definition must be borne in mind in relation to the several powers of a local authority in relation to unfit or overcrowded houses, which may be listed as follows:

1. *Repairs*

If an unfit house is considered by the local authority to be capable of being rendered fit at reasonable expense (*f*), they must serve a notice under section 9 of the Housing Act, 1936, on the "person having control" of the house (*g*), requiring him within a specified time to execute specified works so as to render the house fit for human habitation (*h*). If the notice is not duly complied with within the specified time, the authority may themselves execute the works and recover their expenses so incurred from the person having control; if not so paid, these expenses become a charge upon the land (*i*). Sometimes the duties of the local authority under this section overlap those under section 93 of the Public Health Act, 1936 (*j*), in that the condition of an unfit house which is capable of being remedied may also be such that it amounts to a statutory nuisance; in that event it seems

(*e*) See article by the present writer at [1954] J.P.L. 833.

(*f*) The matters to be taken into account in determining this question were considered in *Bacon* v. *Grimsby Corporation* [1949] 2 All E.R. 875.

(*g*) See definition of this strange expression in s. 9 (4) of the 1936 Act. It is in many cases identical with the "owner" of the Public Health Acts, an expression which is differently defined in s. 188 (1) of the Housing Act, 1936.

(*h*) An appeal lies to the local county court against such a notice: Housing Act, 1936, s. 15 (1).

(*i*) Housing Act, 1936, s. 10 (6).

(*j*) See article by present writer, *ante*, p. 265.

that the local authority may choose which procedure they should follow (*k*).

A rather similar power to serve a notice and require works of repair to be executed exists in the case of a house which is let in lodgings or which is occupied by members of more than one family, where the local authority consider that the house is not reasonably suitable for such occupation, having regard to certain specified defects (*l*).

2. *Demolition*

If an unfit house is considered *not* to be capable of being rendered fit at reasonable expense, the local authority are then under a duty (unless they propose to deal with the house as part of a clearance area: see below) to take demolition order procedure under section 11 of the Housing Act, 1936. They must in such a case first give the owner and all other persons interested in the house an opportunity of coming before them and being heard by them (*m*), and, if the authority do not accept an undertaking from the owner (or some other interested person) to the effect that (*n*) *either* the house will not be used for human habitation, *or* that works to make it fit will be carried out within a specified time, they *must* proceed to make a demolition order in respect of the house, except in the following circumstances:—

(i) If the house is giving support to another house and they therefore consider it inexpedient to order its demolition, they may in lieu of making a demolition order make a closing order (*o*).

(ii) Similarly, if the house is on the list of buildings of special architectural or historic interest compiled under section 30 of the Town and Country Planning Act, 1947, or is the subject of a building preservation order under section 29 of that Act, they must make a closing order in lieu of a demolition order (*p*).

(iii) As a further alternative, they may determine to purchase the house instead of ordering its demolition, if they consider

(*k*) But see *Salisbury Corporation* v. *Roles* (1948) 92 S.J. 618.

(*l*) Housing Repairs and Rents Act, 1954, s. 11.

(*m*) This procedure for an informal hearing before the local authority is an interesting feature of modern administrative law (*cf.* also s. 19 of the Food and Drugs Act, 1955, and s. 2 (2) of the Small Lotteries and Gaming Act, 1956). In this case, no procedural rules are prescribed by the statute, it being left to the discretion of the local authority as to whether the party may be permitted representation, and to call witnesses, etc.

(*n*) An undertaking in other terms does not comply with the Act and so is not enforceable by the local authority against subsequent owners.

(*o*) Local Government (Miscellaneous Provisions) Act, 1953, s. 10 (1).

(*p*) Housing Act, 1949, s. 3.

it still has some life temporarily as a housing unit, either compulsorily or by agreement (*q*).

Once a demolition order has been made, the owner and other persons interested in the house have a right of appeal within twenty-one days to the local county court (*r*), but, when the order has become operative, it is then the duty of the owner to demolish (*s*) the house, and, if he defaults, it then becomes the duty of the housing authority so to act themselves, subsequently recovering their expenses (making due allowance for the value of the materials) from the person in default (*t*). In the following circumstances, however, the local authority may decide not to enforce demolition of the house:—

(i) If the house is giving support to another house; in such a case they may revoke the demolition order and substitute a closing order therefor (*u*).
(ii) Where the house is considered still to have some life temporarily as a housing unit, the local authority may license its occupation for a limited period (*v*).
(iii) If the owner of the house submits proposals for the reconstruction, enlargement or improvement of the house, they may agree to postpone enforcing demolition, to enable him to carry out those works and then, when (and if) he completes them, they may revoke the demolition order (*w*).

Until a few weeks ago, the persons having an interest in a house which became the subject of a demolition or closing order had no claim for compensation in any circumstances, and if the house were acquired by the local authority compulsorily (or by agreement), the owner would be able to claim only the existing use value as for a cleared vacant site. Under the Slum Clearance (Compensation) Act, 1956, however, an owner-occupier of an unfit house which becomes subject to an operative demolition, closure or clearance order, who occupied the house on December 13, 1955, and acquired his interest in the house during the period between September 1, 1939, and the making of the Order, etc., *or* December 13, 1955 (whichever is the earlier in the particular case), will be entitled to claim as compensation from the local authority the

(*q*) Housing Repairs and Rents Act, 1954, s. 3.
(*r*) Housing Act, 1936, s. 15 (1).
(*s*) This, it seems, means substantially to destroy: see *Housing Law and Practice*, by Schofield and Garner, 2nd ed., at p. 55.
(*t*) Housing Act, 1936, s. 13.
(*u*) Local Government (Miscellaneous Provisions) Act, 1953, s. 11.
(*v*) Housing Repairs and Rents Act, 1954, s. 6.
(*w*) *Ibid.*, s. 5.

difference between the "full compulsory purchase value" and the site value. Further, the local authority may be required to make the special payment provided for in section 42 of the Housing Act, 1936, as for a "well-maintained" house in any case of a house vacated as a consequence of a demolition or closing order after December 13, 1955 (*x*).

3. *Closure*

In the case of a *part* of a building which is unfit, the local authority are under a duty (after giving the owner and other persons interested an opportunity of coming before them and being heard by them) to make a closing order in respect thereof, the effect whereof is to prohibit the use of the specified part of the building for any purpose other than a purpose approved by the local authority (*y*). "Part of a building," as used in section 12 of the Housing Act, 1936, cannot be so construed as to apply to a complete house in a terrace or block (*z*), but a closure order may be made in lieu of a demolition order under one or other of the provisions discussed under paragraph (2) above. The compensation provisions of the 1956 Act apply equally to closure orders as they do to demolition orders.

4. *Clearance Areas*

Demolition and closure orders may be made in respect only of single houses (or parts of a building) although there seems to be no reason, other than administrative convenience, why a row of houses in a terrace should not be dealt with by a series of separate demolition orders. Further, these orders are made by the local authority and, subject to the right of appeal of owners and others to the local county court (*a*), become operative without the need for any Ministerial intervention. Where, however, the housing authority wish to deal with an area containing numbers of unfit houses, or wherein the houses are badly arranged, or the streets are narrow and dangerous, etc., it will normally be decided

(*x*) Slum Clearance Compensation Act, 1956, s. 3; the procedure for claiming this payment is somewhat complicated, especially if the local authority are not prepared to agree in the particular case that the house was in fact well maintained; an appeal will lie to the local county court against any notice to that effect: 1956 Act, s. 3 (3).

(*y*) Housing Act, 1936, s. 12. The approval of the local authority to a particular use may not be unreasonably withheld, and they must determine the closing order when the part of the building to which the order relates has been rendered fit. Use of the premises in contravention of the order constitutes an offence under s. 14 of the 1936 Act.

(*z*) *Birch* v. *Wigan Corporation* [1953] 1 Q.B. 136.

(*a*) Housing Act, 1936, s. 15.

to proceed by declaring the area to be a clearance area under Part III of the Housing Act, 1936 (*b*). Where this course is taken, such a declaration has no immediate legal effect so far as the owners of land in the area are concerned, but the local authority thereupon become subject to a duty either to acquire the land within the clearance area (compulsorily or by agreement), or to order the demolition of houses and other buildings in the area by the making of "clearance orders." Where the authority proceed by way of compulsory acquisition (*c*), the procedure laid down in the First Schedule to the Housing Act, 1936, will apply (*d*), and *not* that of the Acquisition of Land (Authorisation Procedure) Act, 1946 (*e*). Clearance orders—and compulsory purchase orders—are subject to the approval of the Minister (unlike demolition and closing orders), and any person aggrieved will be entitled to make representations to the Minister before the order is confirmed, and he must then either hold a public local inquiry, or give the objector (*f*) an opportunity of being heard before an inspector of the Ministry appointed for that purpose.

Once a clearance order has been confirmed and become operative, the local authority must proceed to secure the clearance of all the buildings thereby affected, either by ensuring that the respective owners carry out the demolition, or by acting themselves in default of compliance by the owners (*g*). Demolition may, however, be postponed in the following circumstances (*h*):

(i) Where the clearance order itself provides for the particular house to be let (presumably by agreement) to the local authority for temporary use as a housing unit (*i*).

(ii) Where the local authority are prepared to license the house for use as temporary accommodation (*j*).

(iii) Where the local authority decide to purchase the house for temporary accommodation instead of ordering its demolition (*k*).

(*b*) As an alternative, the local planning authority may redevelop the area as a whole—see below.

(*c*) Their powers are not confined precisely to land actually *within* the clearance area: see Housing Act, 1936, s. 27.

(*d*) Some of the forms used have recently been amended as a consequence of the Slum Clearance (Compensation) Act, 1956.

(*e*) In practice the procedures are very similar but the forms used are different.

(*f*) Housing Repairs and Rents Act, 1954, First Schedule, para. 2.

(*g*) Housing Act, 1936, s. 26. Note that in this case (unlike the position with demolition orders), the local authority are under a legal duty to rehouse persons displaced: *ibid.*, s. 45.

(*h*) *Cf. Demolition*, above.

(*i*) Housing Repairs and Rents Act, 1954, s. 4.

(*j*) *Ibid.*, s. 6.

(*k*) *Ibid.*, s. 2.

As in the case of houses subject to demolition or closing orders (*l*), no compensation (other than in respect of a "well-maintained" house (*m*)) was payable in respect of a house which had become subject to a clearance order, but certain owner-occupiers can now claim the difference between the "full compulsory purchase" or market value and the site value, under section 1 of the Slum Clearance (Compensation) Act, 1956.

Under section 1 of the Housing Repairs and Rents Act, 1954, each local authority were required to submit to the Minister and to place on public deposit a statement showing how they proposed to use their slum clearance powers. The statement in the form required by the Minister does not, however, descend to details, nor does it specify any particular houses or areas as being likely to become subject to slum clearance procedure, and it will not therefore be of any very real interest to landowners. Even if it appeared that a particular house were included in this statement as being a house which would be dealt with in some way or another within a certain time the statutory procedure would still have to be fully observed in respect of that house.

5. *Redevelopment Areas*

As an alternative to the declaration of a clearance area, the local authority may declare an area of land to be a "redevelopment area" (*n*). When such a declaration has been approved by the Minister, it then becomes the duty of the local authority to acquire, compulsorily (*o*) or by agreement, all the land within the area, unless they may have been able to make arrangements for the redevelopment of the land by private individuals (*p*).

6. *Development Plans*

In practice the "redevelopment area" procedure is not often used at the present time, as it is usually more convenient to use the wider powers that are rendered available by the area being designated as subject to compulsory acquisition in the development plan prepared by the local planning authority (*not* the housing authority) under the Town and Country Planning Act, 1947. In such a case, the local housing authority may then make an "unfitness order" in respect of any house within the

(*l*) See above.
(*m*) Under s. 42 of the Housing Act, 1936.
(*n*) Housing Act, 1936, s. 34.
(*o*) The procedure of the First Schedule to the 1936 Act will apply also in this case.
(*p*) Housing Act, 1936, s. 35.

area so designated which is unfit for human habitation (*q*). When such an order has been confirmed by the Minister, the house to which it relates may be acquired compulsorily at site value only, subject to the right to claim a supplement for a well-maintained house (*r*), or the special payment under the Slum Clearance (Compensation) Act, 1956, for certain owner-occupiers (*s*).

7. *Overcrowding*

Overcrowding is treated by Part IV of the Housing Act, 1936, as a criminal offence, and therefore the term has to be defined precisely, and somewhat artificially. For the purposes of this Part, a dwelling-house (*t*) is overcrowded when the number of persons sleeping therein either (*u*):

> " (i) is such that any two of those persons, being persons ten years old or more of opposite sexes and not being persons living together as husband and wife, must sleep in the same room; or
>
> " (ii) is, in relation to the number and floor area of the rooms of which the house consists, in excess of the permitted number of persons," as defined in the Fifth Schedule to the 1936 Act.

Any occupier or landlord (subject to certain detailed exceptions) who allows a house to be so overcrowded is guilty of an offence; the occupier who permits overcrowding loses any security of tenure he may otherwise enjoy in respect of the house by virtue of the Rent Acts, so long (but only so long (*v*)) as the overcrowding in question amounts to an offence under the Act (*w*).

If a house is let in lodgings or occupied by members of more than one family, the local authority are entitled to set their own standard of overcrowding in the particular case, being empowered (*x*) to act if they consider that " excessive numbers of persons are being accommodated on the premises having regard to the rooms available." In such a case they may specify by notice in the prescribed form the maximum number of persons

(*q*) Town and Country Planning Act, 1944, Fifth Schedule, as re-enacted in the Eleventh Schedule to the Town and Country Planning Act, 1947.
(*r*) Under s. 42 of the Housing Act, 1936.
(*s*) See above.
(*t*) Defined in s. 68 of the 1936 Act.
(*u*) See Housing Act, 1936, s. 58.
(*v*) Thus, where a licence of the local authority permitting the overcrowding has been obtained before proceedings for possession commenced by the landlord are heard, the tenant will then be able to claim the protection of the Rent Acts, although when those proceedings were commenced he was guilty of a criminal offence and so not entitled to protection: *Zbytniewski* v. *Broughton* [1956] 3 All E.R. 348.
(*w*) Housing Act, 1936, s. 65.
(*x*) By s. 12 of the Housing Repairs and Rents Act, 1954.

by whom the premises may be used as sleeping accommodation, and then (subject to a right of appeal against the notice to the local county court), it becomes an offence for any person to contravene or allow a contravention of the terms of the notice.

B. The Acquisition of Land

Housing authorities, being creatures of statute, have only such powers of acquisition of land as are given to them by statute. These may be listed as follows:

1. *For the purposes of Part V* of the Housing Act, 1936, *i.e.*, for the provision of housing accommodation, they may acquire:

(a) any land, including any houses or other buildings thereon, as a site for the erection of houses;
(b) houses, or buildings other than houses which may be made suitable as houses, together with any lands occupied with the houses or buildings, or any estate or interest in such houses or buildings (*y*);
(c) land, for the purposes of sale or lease to other persons to secure the provision of housing accommodation (*z*);
(d) land, for the purpose of altering, repairing or enlarging an adjoining house (*a*);
(e) land, for use as recreation grounds, etc., as part of a council housing estate, or for boarding or laundry facilities for their tenants (*b*).

The expression "land" as used in the Housing Act, 1936, includes any right over land (*c*), but it is *not* expressed to include "any estate or interest in land," by analogy to the definition in section 343 (1) of the Public Health Act, 1936. It seems, therefore, that a power to acquire an easement is given to the authority, but it is not so clear that they could acquire anything less than the fee simple, such as a term of years (which a conveyancer would not ordinarily describe as a "right over land"), in the case of land unencumbered with buildings—*aliter* with houses or buildings: see (b) above.

The method of acquisition may be by agreement, or the authority may be authorised to acquire compulsorily (*d*), and

(*y*) Housing Act, 1936, s. 73 (a) and (b), as amended by the Housing Act, 1949.
(*z*) Housing Act, 1936, s. 73 (c).
(*a*) Housing Act, 1949, s. 9.
(*b*) Housing Act, 1936, s. 80; Housing Act, 1949, s. 7, and Housing Act, 1952, s. 5.
(*c*) Housing Act, 1936, s. 188 (1).
(*d*) The procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946, will apply in such cases.

although the words of section 74 (1) of the 1936 Act (which confers the compulsory power) are by no means clear, it seems that this power applies equally to houses or buildings as to land.

The authority may acquire land in advance of their immediate requirements (*e*), and they may accept a gift of land, money or other property (*f*).

2. *For certain slum clearance purposes*, under Part III of the Housing Act, 1936, housing authorities may acquire:

(a) land comprised in, or surrounded by or adjoining, an area declared to be a clearance area (*g*);

(b) land within an area declared to be a redevelopment area, or land outside that area which will be needed for the rehousing of persons who will be displaced therefrom (*h*);

(c) land within an improvement area which is required so as to open out the area (*i*);

(d) land designated in the local planning authority's development plan as being subject to compulsory acquisition by the housing authority for the purposes of redevelopment (*j*).

These powers of acquisition may be exercised by agreement, or the housing authority may be authorised to acquire compulsorily (*k*).

3. *Individual unfit houses*, dealt with by the authority under Part II of the Housing Act, 1936, and not included in clearance, etc., areas, may be acquired by the local authority, by agreement or compulsorily (*l*), in the following circumstances:

(a) where the local county court have found on an appeal against a "repairs notice" (served under section 9 of the 1936 Act) that the house cannot be rendered fit at reasonable expense (*m*); in practice this power is only very rarely used;

(*e*) Housing Act, 1936, s. 74 (2).
(*f*) *Ibid.*, s. 150.
(*g*) Housing Act, 1936, s. 29; amended by the Housing Repairs and Rents Act, 1954, s. 2 (4).
(*h*) Housing Act, 1936, s. 36.
(*i*) *Ibid.*, s. 38; no new improvement areas (a legacy from the Housing Act, 1930) can now be declared.
(*j*) Town and Country Planning Act, 1947, ss. 38 and 40.
(*k*) In cases (a), (b) and (c), the procedure of the First Schedule to the Housing Act, 1936, will apply to compulsory acquisitions; in case (d), the procedure of the Acquisition of Land (Authorisation Procedure) Act, 1946, will apply.
(*l*) The 1946 Act applies here.
(*m*) Housing Act, 1936, s. 16.

(b) where the local authority would otherwise be required to make a demolition order in respect of the house under section 11 of the Housing Act, 1936, they may in lieu thereof acquire the house for temporary housing accommodation if it still has some "life" left; this power also applies where a licence for the temporary occupation of the house has been granted and subsequently revoked (*n*).

4. *Requisitioned houses* may be acquired by the authority by agreement (on compulsory acquisition terms for compensation) under section 6 of the Requisitioned Houses and Housing (Amendment) Act, 1955.

C. The Control of Rents

Perhaps the most interesting branch of housing law from the point of view of the private conveyancer is that concerned with the restrictions on rents that may be imposed in certain circumstances by action taken by the housing authority. The enforcement of the Rent Acts is to some limited extent the concern of the local housing authority (*o*), but they may exercise a control over rents in some cases outside the scheme of the Rent Acts.

Thus (*oo*):

(a) Where an improvement grant for the improvement or conversion of a building is made by the local authority under Part II of the Housing Act, 1949, and the dwelling so improved or provided is one which becomes subject to the Rent Acts (*p*), the authority must then fix a standard rent for the purposes of those Acts (*q*). Although the other conditions that may be imposed under section 23 of the 1949 Act as a consequence of a grant having been made will become unenforceable after the lapse of a specified time (*r*), or may be "bought off"

(*n*) Housing Repairs and Rents Act, 1954, ss. 3 and 6 (5).

(*o*) Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, ss. 11 and 16 (3); Furnished Houses (Rent Control) Act, 1946, s. 10. They also have power to act as a "poor man's lawyer" and give advice on the operation of the Rent Acts.

(*oo*) These controls will be preserved under the Rent Bill now before Parliament, but some increases in the rents fixed will be allowed in most cases (see cl. 12).

(*p*) The Acts apply regardless of the fact that the improvement may have been effected after the commencement of the Housing Repairs and Rents Act, 1954; see proviso to s. 35 (1) thereof.

(*q*) Housing Act, 1949, s. 22; Housing Repairs and Rents Act, 1954, s. 37; and see also s. 16 (6) thereof.

(*r*) Housing Repairs and Rents Act, 1954, s. 16 (2).

by repayment of the grant (*s*), the rent so fixed will continue to be the standard rent indefinitely.

(b) When a house owned by the local housing authority for the purposes of the Housing Acts is sold under the powers of section 79 of the 1936 Act and the Housing Act, 1952, the authority must fix a maximum rent and a maximum re-selling price. The sale price will apply for a period of five years only, but the rent becomes the standard rent for the house for the purposes of the Rent Acts (*t*).

(c) Where a house was built by some person other than the local authority (*e.g.*, by a housing association under section 94 of the Housing Act, 1936, or by a farmer for the benefit of a member of the agricultural population under section 3 of the Housing (Financial Provisions) Act, 1938), the local authority have power to control the rent chargeable in respect thereof and to impose certain other conditions, usually by means of an agreement or undertaking entered into or given prior to the building of the house.

(d) Under the Furnished Houses (Rent Control) Act, 1946, the local authority may refer to the local rent tribunal the terms of a contract of letting of a furnished dwelling, regardless of the wishes of the landlord and the tenant, and may thereby exercise some control over the rents charged for furnished dwellings in the locality.

(e) Other houses may be subject to a control of rent exercised by the local authority, under legislation which is still in force, but cannot now be applied to a house for the first time. This may arise under the Housing (Rural Workers) Act, 1926, whereby the local authority fixed the maximum rent that might be charged (*u*) for an agricultural house in respect of which a grant had been made—similar to the modern improvement grant—under that Act and later statutes amending the same. No such grant could have been made under these powers after September 30, 1945, but the conditions were—and are—enforceable by the local authority (*v*) for a period of twenty years from the date on which the dwelling first became fit for occupation after completion of the works in respect of which the grant was made.

(*s*) With compound interest at the prescribed rate, under s. 23 (2) of the Housing Act, 1949.

(*t*) Housing Act, 1952, s. 3.

(*u*) This had to be based on the prevailing agricultural rents in the district: Housing (Rural Workers) Act, 1926, s. 3 (1) (a). The fixed rent may be increased if there is a general increase in such rents in the district: *ibid.*, s. 3 (1) (b), proviso, and see *Black Mill, Ltd.* v. *Straker* [1950] 1 K.B. 348.

(*v*) Housing (Rural Workers) Act, 1926, s. 3 (1).

EQUITABLE INTERESTS IN LAND: SOME PROBLEMS OF PRIORITY

By F. R. Crane, ll.b., Solicitor

1. Introduction

The problems of priority discussed in this article are raised, either directly or by implication, by the recent decision in *Rust* v. *Goodale* (*a*), and it will be convenient to begin with an account of the facts and decision in that case.

(1) *Rust* v. *Goodale*

W. H. (hereinafter and in the report referred to as "the underlessor") being entitled by assignment to the benefit of an agreement for a lease for eleven years created in 1951, in 1953 mortgaged it successively to the first mortgagee and the plaintiff. Both mortgages were drafted as legal charges but of course created only equitable interests: both documents excluded the mortgagor's power of leasing except by consent of the mortgagee. The second mortgage was registered as a puisne mortgage (*b*) under the Land Charges Act, 1925, but apparently (the report is not entirely clear) the first mortgage was not protected either by registration or by a deposit of the agreement for the lease. On February 4, 1954, the underlessor gave to the defendant a sublease, necessarily equitable, of part of the premises without the consent of either mortgagee; in any event the terms of the sub-lease did not comply with the statutory requirements for leases by a mortgagor in possession (*c*). On February 15, 1954, a legal lease was granted to the underlessor in pursuance of the original agreement. On April 6, 1955, he gave to the first mortgagee a supplemental legal charge "to secure the moneys due under the first mortgage." On April 7, 1955, in pursuance of a contract of March 1, the first mortgagee in a proper exercise of his power of sale assigned the lease to the plaintiff; the contract, but not the assignment, was expressed to be subject to and with the benefit of the

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(*a*) [1956] 3 W.L.R. 749; [1956] 3 All E.R. 373.

(*b*) L.C.A., 1925, s. 10 (1), class C (i); such registration was improper since puisne mortgages are there defined as *legal* mortgages unprotected by a deposit of title deeds.

(*c*) Law of Property Act, 1925, s. 99. A fine was taken and the best rent was not reserved.

underlease. The plaintiff now sought possession from the defendant. Harman J. held:—(1) that both mortgages bound the underlessee; (2) that consequently the underlease, though good by estoppel against the mortgagor, was void against the mortgagees; (3) that the plaintiff as purchaser from the first mortgagee succeeded to his rights; and (4) that the plaintiff's second mortgage merged in the lease when the latter was assigned.

(2) *Problems to be discussed*

The law relating to equitable interests arising under properly constituted settlements under the Settled Land Act, 1925, or under trusts for sale, is for the most part well settled and is not dealt with in this article. Discussion will be limited to problems of priority affecting equitable interests in land arising under contracts for sale, agreements for leases, equitable mortgages and bare trusts (*cc*). Three separate situations have to be considered:—first, the rights of an assignee (*d*) of such an equitable interest against the vendor, lessor, mortgagor or bare trustee; second, the priority *inter se* of competing assignees; and third, the rights of the original owner or assignee against a purchaser of the land or some interest therein. Different principles of priority may and probably do have to be applied in each case.

2. Right of assignees of equitable interests in land against vendors, etc.

The equitable interests in land detailed above are, of course, normally assignable, though it may be necessary to obtain the consent of a lessor if the agreement for the lease so provides (*e*). In *Rust* v. *Goodale*, *supra*, licences to assign and underlet were obtained (*f*). Such assignments must be in writing in accordance with the general rules for the transfer of interests in land (*g*).

To ascertain whether and in what manner the assignee can sue the vendor, lessor, mortgagor or bare trustee it is necessary to consider the law relating to the assignment of choses in action. Any equitable assignment of a contract for sale or agreement for a lease will enable the assignee to sue in his own name for specific

(*cc*) Only unregistered conveyancing is discussed in this article.

(*d*) Here, and generally unless the context otherwise requires, the word "assignee" includes lessee or sub-lessee and mortgagee.

(*e*) *Buckland* v. *Papillon* (1866) L.R. 1 Eq. 477; here an agreement for a lease first vested in the lessee's trustee in bankruptcy and was subsequently assigned by him.

(*f*) See [1956] 3 W.L.R., at p. 751; [1956] 3 All E.R., at p. 376.

(*g*) L.P.A., 1925, s. 53.

performance (*h*); even an assignee of only a limited interest (*e.g.*, a lessee) can obtain specific performance provided the original contract is also performed, so in this instance he will need to join the assignor (*i*). If the assignment complies with section 136 of the Law of Property Act, 1925, (whereby it must be absolute and not by way of charge only, made in writing and express notice in writing thereof must be given to the debtor—*i.e.*, vendor, etc.) then the assignee can also sue in his own name at law.

Where an equitable mortgage or bare trust is concerned of course only the rules stated above in regard to equitable assignment can be relevant (*k*).

Apart from the requirements of the Law of Property Act, 1925, s. 136, the question of notice is relevant to decide the extent to which performance between the original parties may determine the obligation. Thus, a trustee is entitled to distribute the trust fund to those beneficiaries, or assigns of beneficiaries, of whom he has notice, and obtains a good discharge by so doing (*l*). Likewise a vendor without notice of an assignment can and must convey to the original purchaser (*m*). Similarly, where a mortgage is transferred the assignee takes subject to the state of account between the original mortgagee and mortgagor at the date when the latter receives notice of the transfer (*n*). An assignee who takes the mortgage deed may in practice protect himself against a complete payment off, for the mortgagor will want the deed receipted and given up (*o*), but may be affected by payments of instalments. The principle here discussed must also, it is submitted, apply where the benefit of an agreement for a lease has been assigned.

Assignments of contracts for sale and agreements for leases are apparently registrable as estate contracts under the Land Charges Act, 1925 (*p*), but the Act does not appear to catch assignments

(*h*) See Williams, *Vendor and Purchaser*, 4th ed., Vol. I, pp. 595–599 for a full discussion; *Nelthorpe* v. *Holgate* (1844) 1 Coll. 203; *Dowell* v. *Dew* (1843) 1 Y. & C.C.C. 345; *Buckland* v. *Papillon*, *supra*.

(*i*) Williams, *Vendor and Purchaser*, *ubi supra*; *Browne* v. *London Necropolis Co.* (1857) 6 W.R. 188; *Shaw* v. *Foster* (1872) L.R. 5 H.L. 321.

(*k*) It should, however, be remembered that in most cases equitable mortgages give the mortgagee power to create a legal mortgage—see, for example, *Barclays Bank, Ltd.* v. *Bird* [1954] Ch. 274.

(*l*) Lewin on *Trusts*, 15th ed., at pp. 252–253, 642–643.

(*m*) *Shaw* v. *Foster* (1872) L.R. 5 H.L. 321. The case turned on the inadequacy of a notice which did not properly indicate to the vendor that the so called assignee had acquired any real interest. See also *Rose* v. *Watson* (1864) 10 H.L.C. 672.

(*n*) *Turner* v. *Smith* [1901] 1 Ch. 213 and cases cited; Waldock, *The Law of Mortgages*, 2nd ed., at pp. 322 *et seq.*

(*o*) See L.P.A., 1925, s. 115.

(*p*) L.C.A., 1925, s. 10 (1), class C (iv)—the definition is discussed *post*, p. 448.

of mortgages or interests under bare trusts. Consequently as regards the two prior interests the question arises whether registration would be notice to the vendor or lessor, remembering that by section 198 of the Law of Property Act registration "shall be deemed to constitute actual notice . . . to all persons and for all purposes connected with the land affected." Support for an affirmative answer can be derived from the extensive effect given to section 198 in *Re Forsey and Hollebone's Contract* (*q*) and from section 96 (2) of the Act, which specifically relieves a mortgagee of the need to search before returning the deeds to the mortgagor on payment off. On the other hand, since registration is effected against the name of the estate owner, the vendor or lessor would be in the somewhat absurd position of searching against himself. Moreover, the prospect of vendors and lessors, as well as purchasers and lessees, searching before completion may be described, in words used in this Journal in a different context (*r*), as "too horrible to contemplate." In practice the prospect would not be so bad, because the vendor or lessor could insist on seeing at completion the search certificate obtained by the purchaser or lessee. However, it is suggested that the safer view is that express notice must be given to prevent performance in favour of the assignor constituting a valid discharge of the other party's obligations.

3. Priority inter se of assignees of equitable interests in land

Prior to 1926 the rule in *Dearle* v. *Hall* (*s*), whereby priority is dependent upon the giving of notice to trustees, did not apply to equitable interests in land. Such interests, in leaseholds as well as freeholds (*t*), were governed by the general principle that where the equities are equal the first in time prevails (*u*); consequently a prior interest would only be displaced by some misconduct on the part of the owner thereof. The 1925 legislation modified this general principle both by extending the operation of the rule in *Dearle* v. *Hall*, and by introducing registration of land charges.

(1) *Extent of application of rule in Dearle* v. *Hall after 1925*

By section 137 (1) of the Law of Property Act, 1925, the rule in *Dearle* v. *Hall* is extended to "dealings [after the Act] with

(*q*) [1927] 2 Ch. 379.
(*r*) By Professor L. A. Sheridan, in 17 Conv.(N.S.) at p. 459, of the proposition that a written licence which escaped the Rent Restrictions Acts might yet constitute settled land.
(*s*) (1823) 3 Russ. 1. (*t*) *Wiltshire* v. *Rabbits* (1844) 1 Sim. 76.
(*u*) *Re Richards* (1890) 45 Ch.D. 589; *Taylor* v. *London and County Banking Co.* [1901] 2 Ch. 231.

equitable interests in land, capital money and securities representing capital money"; subsection (2) provides that notice shall be given to the trustees of a settlement of settled land, or to trustees for sale, or in any other case, to the estate owner of the land affected; by subsection (10) the section "does not apply until a trust has been created." It is suggested that this section was intended to apply only to dealings with interests arising under a settlement under the Settled Land Act, 1925, or under a trust for sale, and therefore overreachable on a sale or lease of the land (*a*). Indeed, the examples in the books are always drawn from such interests. Nevertheless, in relation to the prior equitable interests under discussion in this article, section 137 (10) seems to include the beneficial interest under a bare trust and to exclude agreements for leases and equitable mortgages; this conclusion as regards agreements for leases is supported *sub silentio* by *Rust* v. *Goodale* (*b*), for the rule in *Dearle* v. *Hall* was not mentioned there. The fate of contracts for sale is less certain, having regard to the fact that after contract a vendor is for many purposes trustee for the purchaser (*c*), but it is submitted that this is not a trust within the meaning of section 137 (10) of the Law of Property Act.

(2) *Application of Land Charges Act, 1925*

The Land Charges Act, 1925, defines an estate contract as "any contract by an estate owner, or *by a person entitled at the date of the contract to have a legal estate conveyed to him* (*d*), to create or convey a legal estate" (*e*). The words italicised seem apt to catch most transactions with contracts for sale or agreements for leases, including all those that took place in *Rust* v. *Goodale*, *supra* (*f*), for there will almost always be an express or implied contract to create a legal estate when possible. As only a purchaser of a legal estate for money or money's worth can take advantage of non-registration (*g*) this point is not necessarily relevant to priority between equitable assignees, but it may help

(*a*) A conclusion supported both by the references to capital money, and by the remaining subsections of s. 137, and s. 138, concerned with the details of giving notice, and the duties of trustees. As to overreaching, see S.L.A., 1925, ss. 21, 72; L.P.A., 1925, ss. 2, 27.

(*b*) [1956] 3 W.L.R. 749; [1956] 3 All E.R. 373.

(*c*) *Shaw* v. *Foster* (1872) L.R. 5 H.L. 321; *Lysaght* v. *Edwards* (1876) 2 Ch.D. 499.

(*d*) The italics are of course the present writer's.

(*e*) L.C.A., 1925, s. 10 (1), class C (iv).

(*f*) The underlessee there eventually obtained a legal estate by the doctrine of "feeding the estoppel" and the first mortgagee by an express grant.

(*g*) L.C.A., 1925, s. 13 (2); L.P.A., 1925, s. 199 (1) (i).

in placing a limited construction on the Law of Property Act, 1925, s. 137. In *Rust* v. *Goodale* Harman J. said (*h*): "It was said at the hearing that the defendant took his [equitable] underlease without knowledge of the two [equitable] mortgages. That would I think in any event be immaterial, but in law it is not correct for, as the second charge was registered, he had notice of that and thus of the first charge also" (*i*). In effect, the learned judge applied the pre-1926 law relating to equitable interests in land and it is submitted that this would be correct also for contracts of sale.

A general equitable charge is defined as "any other equitable charge, *which is not secured by a deposit of title deeds relating to the legal estate affected* (*k*), and does not arise or affect an interest arising under a trust for sale or a settlement, and is not included in any other class of land charge" (*l*). Mr. Megarry has argued cogently that the words italicised limit the definition to equitable charges of legal estates (*m*). The conclusion again is that the priority of assignments of equitable mortgages is governed by the pre-1926 rules.

(3) *Conclusion*

It is submitted, for the reasons given above, that the priority *inter se* of assignees of equitable interests in land created by contracts for sale, agreements for leases and equitable mortgages depends on the pre-1926 law with regard to such interests—that is, where the equities are equal, the first in time prevails.

4. Rights of owners of equitable interests in land, or their assignees, against purchasers from the vendor, etc.

The relationship between equitable mortgagees and lessees is discussed in the next section. Otherwise the principles are straightforward and can be stated briefly.

(*h*) [1956] 3 W.L.R., at p. 753; [1956] 3 All E.R., at p. 377.

(*i*) It is submitted, with respect, that where anyone is entitled to take advantage of non-registration the last part of the quotation is inaccurate (see L.C.A., 1925, s. 13 (2); L.P.A., 1925, s. 199 1 (i)) but may be correct where, as here, only the L.P.A., 1925, s. 198—the positive effect of registration—is relevant.

(*k*) The italics are again the present writer's.

(*l*) L.C.A., 1925, s. 10 (1), class C (iii).

(*m*) 7 C.L.J. (1941) at p. 248, note 49; Mr. Megarry added: "If this was not so, the priority of mortgages of interests such as an equitable fee simple under a bare trust, or an agreement for a lease, would be governed by the Land Charges Act, 1925, s. 13 (2), and by the Law of Property Act, 1925, s. 137"; as regards agreements for leases it is submitted, with respect, that this statement does not take account of the limiting effect of the Law of Property Act, 1925, s. 137 (10).

(1) A bare trust is enforceable against everyone except a bona fide purchaser for value of the legal estate without notice; such notice may be actual, or constructive within the limits imposed by the Law of Property Act, 1925, s. 199.

(2) An estate contract or an agreement for a lease is enforceable against any purchaser if it is registered as an estate contract under the Land Charges Act, 1925; if not so registered it is void against a purchaser of the legal estate for money or money's worth (*n*); other purchasers cannot claim benefit from non-registration and must rely on the general rules of priority. An assignee whose interest falls within the definition (*o*) can, it would seem, gain protection by registering his interest even if the original contract is not registered.

(3) An equitable mortgage protected by a deposit of the title deeds is good against all persons taking an interest in the land with the possible exception of a legal lessee (see below); if protected by registration as a general equitable charge (*p*) it is good against everyone. If not protected in either way it will be void against any purchaser, whether of a legal or equitable interest (*p*). Though registrable, it can be overridden under the Settled Land Act, or under a trust for sale (*q*).

5. Equitable mortgagees and lessees

A special problem here is raised by section 44 of the Law of Property Act, 1925, which both prevents a lessee from investigating the title to the freehold or head lease, and, reversing the rule in *Patman* v. *Harland* (*r*), relieves him of constructive notice of matters he would have discovered by such investigation. It is, however, generally accepted that a lessee nevertheless has notice of matters registered under the Land Charges Act, 1925 (*s*). It follows that a lessee is bound by any legal or equitable mortgage protected by registration (*t*), and also by a legal mortgage protected by a deposit of title deeds, for a legal mortgagee does not need to rely upon the doctrine of notice when enforcing his interest. Consequently, if any of the above mortgages exclude or limit the

(*n*) L.C.A., 1925, s. 10 (1), class C (iv); s. 13 (2).
(*o*) See *supra*, p. 448.
(*p*) L.C.A., 1925, s. 10 (1), class C (iii); s. 13 (2).
(*q*) S.L.A., 1925, ss. 21, 72; L.P.A., 1925, s. 2.
(*r*) (1881) 17 Ch.D. 353: s. 44 (5) is the relevant subsection.
(*s*) *White* v. *Bijou Mansions, Ltd.* [1937] Ch. 610.
(*t*) As a puisne mortgage or general equitable charge respectively: L.C.A., 1925, s. 10 (1), Classes C (i) and C (iii).

mortgagor's statutory power of leasing, the mortgagee is not bound by a lease made in contravention of such restriction (*u*). However, where an equitable mortgage is protected by a deposit of title deeds, the Law of Property Act, 1925, s. 44, should prima facie be given its full effect and a legal lessee thereby take free of the equitable mortgage. This view of the law was put forward in this Journal by Mr. Michael Albery in 1944 (*a*), and has been accepted and reiterated by the Roxburgh Committee on Land Charges (*b*). In such circumstances any restrictions on the mortgagor's statutory power of leasing would apparently be irrelevant.

The point arose in *Rust* v. *Goodale* (*c*) because, when the original agreement for a lease was performed by the grant of a legal lease on February 15, 1954, the underlessee at once obtained a legal estate by the doctrine of "feeding the estoppel" (*d*). Harman J., however, held that no question of priority arose and decided in favour of the mortgagee on the principle that a mortgagor has no power to bind the mortgagee by leases except in reliance on the statutory power (*e*). "The mortgagor therefore was not dealing with the legal term of years vested in him under the Law of Property Act, 1925, but only his equity of redemption" (*f*). This approach, with respect, does not seem to take account of the fact that since 1925 (but not before, because of the rule in *Patman* v. *Harland*) an equitable mortgage may be void against a lessee; if it is so void, it surely cannot affect the capacity of the mortgagee; if it does, section 44 (5) of the Law of Property Act becomes virtually ineffective. It is respectfully submitted that the correct approach in *Rust* v. *Goodale* would have been to ascertain whether, on the particular facts of that case, the lessee was entitled to claim priority to the mortgage by virtue of his legal estate. Such a claim should, it is suggested, have succeeded.

6. Effect of conveyance by mortgagee in Rust v. Goodale

Harman J. held that the first mortgagee's conveyance under his power of sale passed to the purchaser all the mortgagee's rights

(*u*) *Iron Trades Employers Insurance Association, Ltd.* v. *Union Land and House Investors, Ltd.* [1937] Ch. 313; *Dudley and District Benefit Building Society* v. *Emerson* [1949] Ch. 707.

(*a*) "Foul Deeds" in 8 Conv.(N.S.) 146. (*b*) Cmd. 9825, para. 41.

(*c*) [1956] 3 W.L.R. 749; [1956] 3 All E.R. 373. See facts *supra*, p. 444.

(*d*) *Church of England Bldg. Society* v. *Piskor* [1954] Ch. 553 and cases cited; see 18 Conv.(N.S.) 313.

(*e*) *Iron Trades Employers Insurance Assen.* v. *Union Land and House Investors, Ltd., supra*; *Dudley and District Benefit Building Society* v. *Emerson, supra*; *Keith* v. *R. Gancia & Co., Ltd.* [1904] 1 Ch. 774.

(*f*) [1956] 3 W.L.R. at p. 758; [1956] 3 All E.R. at p. 381.

against the lessee, citing *Doe* d. *Lord Downe* v. *Thompson* (*g*). On this part of the decision no difficulty arises. It may be noted, however, that if, by arrangement, the mortgagor, as well as the mortgagee, joins in such a conveyance then the purchaser may be regarded as deriving title from the mortgagor. In that event the purchaser will be bound by any lease binding the mortgagor (*h*).

(*g*) (1847) 9 Q.B. 1037.
(*h*) *Smith* v. *Phillips* (1837) 1 Keen 694.

NOTES ON PART II OF THE LANDLORD AND TENANT ACT, 1954

By Lionel A. Blundell, ll.m., and V. G. Wellings, m.a.(Oxon), Barristers-at-Law

(*continued from page 280*)

III. Applications to the Court for New Tenancies

(1) Need for application

It sometimes happens that the landlord and tenant are able to agree either that a new tenancy shall be granted or that none shall be granted; sometimes they are able to settle between themselves all the terms of a new tenancy and sometimes only some of the terms. Where the landlord and tenant are agreed in principle on the grant of a new tenancy but are not agreed on all its terms there must, of course, be an application to the court by the tenant for the outstanding terms to be determined. Where, however, they are agreed on all the terms and the landlord is the "landlord" (or "competent landlord") (*a*) as defined in section 44 and the Sixth Schedule, not only is an application to the court for a new tenancy unnecessary, it is also impossible. It has been seen (*ante*, p. 274) that where the landlord and tenant agree for the grant to the tenant of a future tenancy of the holding, or of the holding with other land, on terms and from a date specified in the agreement, the current tenancy is to continue until that date but no longer, *and is not to be a tenancy to which Part II applies* (s. 28). If such an agreement is made after the tenant has applied to the court and the application is not withdrawn it would seem that the fact that the current tenancy ceases before the hearing to qualify under Part II does not automatically invalidate the application but that any order which the court makes should follow the terms of the agreement.

Sometimes the tenant is willing, without taking any step to apply for a new tenancy, to accept the landlord's assertion that he intends to demolish or rebuild the premises or to occupy them for his own business purposes and agrees to go out of possession when

(*a*) In practice an agreement of this kind is not likely to be made with an immediate landlord who is not also the "competent landlord" since, by definition (s. 44), the residue of his own term must inevitably be no more than fourteen months in length.

the current tenancy comes to an end by effluxion of time. By so agreeing the tenant, in effect, agrees to surrender his tenancy since, otherwise, the tenancy would continue by virtue of section 24. Unless certain precautions are taken this is not a prudent course for the tenant to take since he will not, in the event that the surrender was induced by innocent misrepresentation or concealment of material facts, be able to claim compensation under section 55 (*b*). The recommended precautions are that the agreement should take the form of a written agreement to surrender which should contain recitals (*c*) and a clause so worded that it would have the effect of a promise on the part of the landlord that, in consideration of the tenant's agreement to surrender, the landlord will, in the event that the tenant was induced to enter into the agreement to surrender by misrepresentation or concealment of material facts on the part of the landlord, pay to the tenant such sum as will compensate the tenant for damage or loss sustained by him as a result of the surrender (*d*). If the case is one in which, if the tenant were in fact to make an application to the court, he would be entitled on quitting the holding to be paid compensation for disturbance under section 37, the agreement to surrender should contain a promise by the landlord to pay such compensation since, no application to the court in fact having been made, no right to compensation for disturbance can otherwise arise. If precautions of the kind suggested are taken the tenant can safely surrender his interest without making any application to the court and, indeed, without waiting for formal determination under the Act of the tenancy. Some tenants, however, taking note of the recent decisions (mentioned *post*, p. 458) on the meaning of the words "the landlord intends," may prefer to put the landlord to proof

(*b*) S. 55 applies only where the *court* is induced, by misrepresentation or concealment of material facts, to refuse an order for a new tenancy. The tenant of course has a remedy in the case of fraudulent misrepresentation if he can *prove* it.

(*c*) That the current tenancy is one to which Part II of the Act applies; that, apart from the agreement to surrender, the current tenancy would continue by virtue of s. 24; that the landlord has asserted that on the termination of the current tenancy he intends to demolish or reconstruct (or, as the case may be) the premises; that in consequence of that assertion the tenant has agreed to surrender the current tenancy.

(*d*) It is conceived that if the agreement is carefully drafted the promise will be enforceable. It is not necessary that the promise should refer specifically to misrepresentation and concealment, since the required effect will be achieved by a provision that compensation becomes payable (i) if at any time after the date of the agreement it appears that the landlord has no intention to demolish or rebuild, etc., or has abandoned any such intention, or (ii) if the demolition, rebuilding, etc., is not begun/completed by the landlord within a specified period. Both these alternative methods have an advantage over the remedy provided by s. 55 since both (unlike s. 55) cover the case of an honest change of mind by the landlord.

in court of his intention; others may do the same thing but only in order to gain time by taking advantage of section 64.

(2) Settlement of application

Where after the tenant has applied to the court for a new tenancy the parties reach agreement as to all the terms of a proposed new tenancy the agreement can be embodied in an order of the court. The simpler, and often less expensive, method, however, is for the tenant to withdraw the application on the terms agreed.

If the parties wish to settle the application on the basis that the tenant shall abandon his claim for a new tenancy, this can be done by the tenant's admitting facts constituting the landlord's ground of opposition under section 30 (1) whereon the court by consent dismisses the application. Again the better and simpler method is for the tenant to withdraw the application (*e*) on any terms agreed. The advantage to the landlord of a withdrawal (as opposed to any other method of settling the application) is that there can be no appeal and that the current tenancy will come to an end on a date which is known for certain (*f*), namely, the end of the period of three months (*g*) beginning with the date of withdrawal. If it is agreed that the tenant shall not be bound to give up possession before a specified date after the expiration of the three months' period, this can be effectuated by including in the terms of settlement either (1) the grant of a *licence* (carefully drawn) by the landlord covering the period from the end of the statutory three months' period until the date agreed, or (2) an undertaking by the landlord not to enforce any order for possession which he may obtain in respect of the premises until after the date agreed. Rent may safely be accepted as rent until the end of the three months' period. After that date it should be accepted, not as rent, but as consideration for the licence or as mesne profits, as the case may be, without any serious danger that a court would infer an intention to grant a new tenancy. The disadvantage to the tenant from a withdrawal (as opposed to other methods of settling the application) is that it precludes any claim by the tenant for compensation for disturbance or misrepresentation or concealment of material facts. This disadvantage can be overcome if the terms of settlement include undertakings on the part of the landlord

(*e*) A more complicated method was adopted in a county court case. See *Haslett* v. *Saxton* [1955] C.L.Y. 1514. See the commentary to that decision in [1955] J.P.L. 870.

(*f*) Consider *Austin Reed* v. *Royal Insurance Co.* (*No.* 2) [1956] 1 W.L.R. 1389.

(*g*) This period can be cut down by agreement.

of the kind suggested on p. 454, *ante*. The terms of settlement ought to deal with the question of costs, since, even if the application is withdrawn as late as the hearing, it would seem that the judge, not knowing the circumstances surrounding the application and having heard no evidence, is in no position to exercise his discretion as to costs (*h*).

(3) Practice and procedure

Parties to application

The proper applicant is invariably the tenant of the holding in question even where the tenant is a trustee for the actual business occupier (*i*) or where the tenant and the business occupiers are both members of a group of companies (*k*). The proper respondent is the particular landlord who fulfils the definition of "landlord" in section 44. The Act does not contemplate that the competent landlord (*i.e.*, the "landlord" according to section 44: see the Sixth Schedule) should be the same person throughout the period beginning with the service of the statutory notice determining the tenancy and ending with the date of the hearing: *X. L. Fisheries* v. *Leeds Corporation* [1955] 2 Q.B. 636. If, after the date of the application to the court, there is at any stage of the proceedings a change of interest by virtue of which A, the original respondent, ceases, and B becomes, the competent landlord the proceedings cease to be properly constituted unless B is added or substituted as respondent: *Piper* v. *Muggleton* [1956] 2 W.L.R. 1093. In that case the tenant of the premises was, when he served a section 25 notice on his subtenant, the competent landlord; subsequently but before the hearing of the subtenant's application for a new tenancy the tenant had become statutory tenant of the holding; the Court of Appeal held that the tenant had thereby ceased to be the competent landlord and that the proceedings were no longer properly constituted, since the next superior landlord who satisfied the definition of "landlord" ought to have been substituted as respondent (*l*).

Of course, any intermediate or superior landlord is entitled to be served with a notice of the proceedings (see C.C.R. Ord. 40,

(*h*) See the county court case of *Campion & Bower* v. *Abbot* [1956] J.P.L. 194: 105 L.J.News. 648.

(*i*) See s. 41 and *Frish* v. *Barclays Bank* [1955] 2 Q.B. 541.

(*k*) See s. 42.

(*l*) In the county court Order 5, rr. 36 and 37, applies to applications of this kind: *per curiam* [1956] 2 W.L.R. at 1180. In the High Court, see R.S.C., Ord. 16, r. 11.

rules 14 (2), 15 (2); R.S.C. Ord. 53D, rule 5 (3)) and in an appropriate case to be joined as a respondent (*ll*).

The answer

In the county court the respondent must, within eight days of the service of the application on him, inclusive of the day of service, file in the court office an answer in Form 336 together with as many copies as there are other parties to the proceedings: Order 40, r. 8 (2). In the recent county court case of *Desbroderie* v. *Segalov* (1956) 168 E.G. 311, the judge took the view that the sub-rule was imperative, and, the landlord having filed no answer at all, the judge refused to allow him to defend except as to the amount of the rent (*m*). The time limits laid down in the Act (in sections 25 (5), 26 (6), 29 (2), (3)) undoubtedly cannot be enlarged, but Order 40 is subject to Order 13, r. 5, of the County Court Rules which permits time limited in the Rules to be enlarged by consent or by the court and the power may be exercised retrospectively. There is no reference to this rule in *Desbroderie* v. *Segalov*, *supra*. It is thought that rarely can a refusal to allow the landlord to defend be justified merely because he has not filed an answer. A proper exercise of Order 13, r. 5, will allow him to file an answer as late as the hearing itself. If the applicant is taken by surprise he has nothing to lose from an adjournment and, no doubt, would be awarded the costs thrown away. Indeed, it must often be proper to allow the respondent, subject to a suitable award of costs to the applicant, an adjournment for the purpose of filing an answer. In the High Court such pleadings as there are usually take the form of affidavits and the time limits within which affidavits are to be filed (and any extension of time) are within the discretion of the Chancery Master to whom the case is allocated. Indeed R.S.C., Ord. 53D does not specifically require any affidavits to be filed (see rule 5 (3)) but in practice they are always required and the master will not allow the summons to be adjourned to the judge until such evidence as he has ordered is complete.

(4) Landlord's grounds of opposition

In practice the most important grounds on which a landlord may, by virtue of section 30 (1), oppose an application are those in

(*ll*) See C.C.R. Ord. 15, r. 1; R.S.C. Ord. 53D, r. 6. Thus, if the competent landlord's reversion is less than the term applied for, a superior landlord should be joined since the grant of a reversionary term will be necessary in order to give effect to the term applied for.

(*m*) The points on which the landlord wished to defend are not mentioned; nor is it stated whether the landlord in his section 25 notice or notice in opposition to a section 26 notice (the precise method of determination of the tenancy is not mentioned either) opposed the grant of a new tenancy.

paragraphs (f) and (g) in which the landlord relies on his intention to demolish or rebuild the premises or occupy them for his own purposes. In a number of important recent cases (*n*) the courts have pronounced on the nature of the intention which the landlord must establish and on the considerations which are material in determining whether that intention exists. There has also been much discussion as to what exactly is the relevant date at which the intention must be shown to exist and various dates have been suggested: the date of service of the section 25 notice or notice in opposition to the tenant's request (*o*), the date of the hearing of the tenant's application (*p*), or both dates (it being necessary to show that the intention persists from the one to the other) (*r*). These and related questions have now been discussed in the Court of Appeal on the hearing of an appeal in *Betty's Cafés* v. *Phillips Furnishing Stores* and the court has reserved judgment. At the time of writing this article it is not known when the court will give judgment and, since it is believed that the court may well have important observations to make with regard to paragraphs (f) and (g), it is proposed, apart from the general remarks below, to defer consideration of those paragraphs until the next article in this series.

General observations on paragraphs (a) to (g)

In his notice under section 25 or his notice in opposition to the tenant's request the landlord must, if he would oppose an application to the court, state the grounds on which he would oppose it. It is particularly noticeable that a landlord who in such notice states that he relies on paragraph (a), (b), (c) or (d) of section 30 (1) is inevitably making a statement as to a state of affairs already in existence. Indeed the landlord cannot rely on any of those paragraphs unless at the date of the notice in question the premises are out of repair, rent is in arrear, the tenant has committed breaches of other obligations or the landlord has offered alternative accommodation. In a sense also it is true to say that paragraph (e) is looking to an existing state of affairs

(*n*) *Atkinson* v. *Bettison* [1955] 1 W.L.R. 1127; *Fisher* v. *Taylor's Furnishing Stores* [1956] 2 W.L.R. 985; *Betty's Cafés* v. *Phillips Furnishing Stores* [1956] 1 W.L.R. 678; *Reohorn* v. *Barry Corporation* [1956] 1 W.L.R. 845; *Fleet Electrics* v. *Jacey Investments* [1956] 1 W.L.R. 1027; *H. L. Bolton (Engineering) Co.* v. *T. J. Graham & Sons* [1956] 3 W.L.R. 804.

(*o*) So held by Danckwerts J. in *Betty's Cafés* v. *Phillips Furnishing Stores*, *supra*.

(*p*) The view expressed by Denning L.J. in *Reohorn* v. *Barry Corporation*, *supra*.

(*r*) The view expressed by Lord Evershed M.R. in *Fleet Electrics* v. *Jacey Investments*, *supra*.

since the landlord cannot in his notice place reliance on that paragraph unless he is already in a position to say that the rent reasonably obtainable on a letting of the property as a whole exceeds the aggregate of the rents reasonably obtainable on separate lettings of parts of the property. Considerations such as these tend to support the view that the material date throughout section 30 (1) is the date of service of the landlord's notice. Against this it may be said that paragraphs (f) and (g) and, to a less extent, paragraph (e) are looking to the future. Moreover, if, so far as paragraphs (a) to (c) are concerned, the material date is the date of the landlord's notice, it may follow that the court can consider nothing (such as the fact that the tenant has before the hearing remedied the breaches in question) occurring after that date, and this is a conclusion not to be lightly reached. It has already been stated that the decision of the Court of Appeal in *Betty's Cafés* v. *Phillips Furnishing Stores* and, with it, the question of the material date for the purposes of paragraphs (f) and (g), will be discussed in the next article in this series. Final conclusions on the material date for the purposes of the other paragraphs of section 30 (1) are also better left until then.

Persistent delay in paying rent

In a county court case (*s*) it has been held that the words "persistent delay in paying rent" in paragraph (b) do not envisage that the rent must be substantially in arrear nor that the arrears need last a long time; a landlord is not expected to be subjected to the work and irritation of dunning a tenant for his rent. It is thought that the judge's view is right. "Persistent delay" indicates a course of conduct over a period which may be long or it may be short; the court has to weigh up the seriousness of that conduct, taking into account the number of times on which delay has occurred, the length of delay, and the steps which the landlord was obliged to take in order to secure payment and any reason for the delay (*t*).

Alternative accommodation

In *Lawrence* v. *Carter*, a county court case (*v*), the view was expressed that the legislature, in making use of the words "alternative accommodation" in paragraph (d), intended those words to be construed in the same manner as in the Rent Acts. Those words in the Rent Acts have by themselves no special

(*s*) *Horowitz* v. *Ferrand* [1956] 5 C.L. 207.
(*t*) See *Dellenty* v. *Pellow* [1951] 2 K.B. 858, a Rent Acts case.
(*v*) [1956] J.P.L. 432.

meaning but the provisions as to alternative accommodation in those Acts are materially different from those in paragraph (d). Moreover, in *Singh* v. *Malayan Theatres* [1953] A.C. 632 it was said: "Their Lordships . . . at once state that they get very little assistance [in interpreting the provisions as to alternative accommodation for businesses contained in a Singapore Ordinance] from cases which have been decided upon the terms of the English Acts, since in their view principles applicable to the retention by tenants of places which are required as a home have very little bearing on the position of a tenant who requires a place in which to conduct his business." In *Lawrence* v. *Carter* the tenant occupied the whole of the demised premises, and the landlord opposed an application for a new tenancy on the ground that he had offered and was willing to grant to the tenant a new lease of the whole of the premises less a small portion at the rear; it was held that the accommodation offered was alternative accommodation suitable to the tenant's requirements. Under the Rent Acts it is established that a part of premises may be "alternative" to the whole when the tenant in fact occupies the part only, but there is no binding authority which lays down that the part may be "alternative" to the whole when the tenant occupies the whole although it is thought that the cases do establish a general principle to that effect. Assuming the existence of such a general principle, it must still be shown that the part of the holding offered as alternative accommodation is suitable for the tenant's requirements having regard to the nature and class of his business, and it would seem that if the alternative accommodation will involve the carrying on of the business in a different and diminished way by a rearrangement in the mode of its conduct the alternative accommodation is not suitable: see *Singh* v. *Malayan Theatres*, *supra*, at p. 641, *per* Lord Porter. See also *Gold* v. *Brighton Corporation* [1956] 1 W.L.R. 1291 (not a case on alternative accommodation) where Denning L.J. said (at p. 1293): "Inasmuch as the tenant is to be protected in respect of his business, the terms of the new tenancy should be such as to enable him to carry on his business as it is. They should not prevent him from carrying on an important part of it."

Tenancies to which Part II of the Act applies—Addendum

Tenancies at will. The decision of the Court of Appeal in *Wheeler* v. *Mercer* [1956] 1 Q.B. 274 was criticised in the first

articles in this series (*ante*, pp. 93–97). That decision has now been reversed by the House of Lords: see [1956] 3 W.L.R. 841. Viscount Simonds and Lords Cohen, Keith of Avonholm and Somervell of Harrow all expressed the opinion that Miss Mercer was a tenant at will although Lord Morton of Henryton, without deciding the point, thought that she was a tenant on sufferance, and therefore on that ground outside the scope of Part II of the Act. The House, however, was unanimous in their view that a tenancy at will arising by implication of law was outside the scope of Part II. Lord Simonds in particular was impressed by the failure of the draftsman in subsections (3) and (4) of section 25 and in section 43 (3) to cater for tenancies at will, which are not ordinarily terminated by notice to quit and do not expire by effluxion of time, and by the anomaly of excluding from the protection of the Act tenancies granted for a term certain not exceeding three months but including tenancies at will whose duration might be for a shorter period. Some considerable doubt was also expressed as to whether a tenancy at will, at all events one arising by implication of law, is created by a "tenancy agreement" as required by section 69. On a final point, Lord Simmonds' observations are interesting. He said (at p. 845): "There must be many cases, *e.g.*, where a purchaser has been let into possession before completion without any special stipulation and is therefore at law a tenant at will . . . I must observe that, notwithstanding the observation of Denning L.J. and the reference to *Errington* v. *Errington* [1952] 1 K.B. 290, I cannot but regard the example that I have given as a typical case of a tenancy at will."

DEVELOPER'S PROFITS AND SCHEDULE D TAX

By Edward F. George, ll.b., Solicitor

In this article we propose to consider the incidence of Schedule D tax where a developer erects flats, or converts an existing building into flats, and subsequently sells them in fee simple or by way of the grant of long leases at premiums.

Liability to Tax. Usually the developer is a person, such as a builder, carrying on the trade of dealing in land so that the profit made in connection with the development is liable to tax and the only question is how the liability is to be calculated (*a*). There are, however, cases where the profit is a capital appreciation and does not attract tax.

Casual Transactions. In the case of an individual whose business is not that of dealing in property, he will not be liable to tax merely because he converts his house into flats and sells them off, retaining one for himself. To attract liability the development must be "an adventure in the nature of trade" (*b*), which is generally a mixed question of fact and law (*c*). When all the relevant facts are found, the conclusion whether they point to an adventure in the nature of a trade may admit of only one answer, but where the conclusion may reasonably be arrived at one way or the other the Commissioners' decision is final. The mere fact that the developer when he purchased hoped to see an increase in value is not sufficient to make him liable (*d*), and regard must be had to a number of factors, of which the most important are the nature of the property, any work done in relation to it, the application of special skill in relation to its exploitation and existence of an organisation (*e*), though these are by no means exhaustive (*f*).

A distinction has been drawn by the courts between property, such as large quantities of whisky, linen, paper or machinery (*g*),

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(*a*) This is dealt with *post*, p. 464.
(*b*) Income Tax Act, 1952, s. 526 (1); *Jones* v. *Leeming* (1930) 15 T.C. 333.
(*c*) *Edwards* v. *Bairstow* (1955) 36 T.C. 207.
(*d*) *Jones* v. *Leeming* (1930) 15 T.C. 333, 357.
(*e*) *Ibid.*; *Bradshaw* v. *Blunden* (1956) 36 T.C. 397.
(*f*) *Edwards* v. *Bairstow* (1955) 36 T.C. 207, 230.
(*g*) *C.I.R.* v. *Fraser* (1942) 24 T.C. 498; *Martin* v. *Lowry* (1927) 11 T.C. 297; *Rutledge* v. *C.I.R.* (1929) 14 T.C. 490; *Edwards* v. *Bairstow* (1955) 36 T.C. 207.

which is not an income-producing asset or reasonably susceptible of consumption or giving the pleasure of enjoyment, and property which is, such as stocks and shares and land (*h*). The mere fact that a person purchases property of the latter type, even with a view to sale at a profit at the first convenient opportunity (*i*), is not sufficient to render him liable to tax on the profit. But in relation to flats, in many, if not most, cases, there is a second element of importance: not only does the purchaser buy the building solely with a view to making a profit on sale but he does some work of conversion, and, if this is at all substantial, and there is nothing to negative the inference that he has embarked on an adventure in the nature of trade, the profit will attract tax. The inference may be negatived by showing that part of the property has been retained as an investment, as where some of the flats are let in the usual way at rack rents, or for occupation. Where there is an element of iteration and the developer deals in a number of properties or his usual occupation has endowed him with a special skill enabling him to carry out the development effectively and efficiently, the development will almost certainly bring about fiscal retribution (*k*).

Property Holding Companies. Even where there is no dispute that the developer carries on business, it does not follow that he is necessarily dealing in flats as a business: his business may be that of holding land as an investment. If he decides to change his investment and makes a profit in doing so, that is a capital gain and does not attract tax. For example, if a company purchases a block of flats and lets the flats to different tenants, it may decide at some propitious moment to sell the block. It may find, particularly if the flats are rent restricted, that it would be more advantageous to sell the block piecemeal, flat by flat as they became vacant. The premiums received would not attract tax (*kk*). Whether a company is a property-dealing company or a property-holding company is a question of fact for the Commissioners (*l*), and a great deal will turn on the history and

(*h*) *C.I.R.* v. *Fraser* (1942) 24 T.C. 498, 502; *C.I.R.* v. *Reinhold* (1953) 24 T.C. 389; *Bradshaw* v. *Blunden* (1956) 36 T.C. 397, 409.

(*i*) *Jones* v. *Leeming* (1930) 15 T.C. 333, 357, 360; *C.I.R.* v. *Fraser* (1942) 24 T.C. 498, 502; *C.I.R.* v. *Reinhold* (1953) 24 T.C. 389.

(*k*) *Page* v. *Pogson* (1954) 35 T.C. 545.

(*kk*) *C.I.R.* v. *Hyndland Investment Co., Ltd.* (1929) 14 T.C. 694 (flats in course of erection purchased as an investment and completed).

(*l*) *C.I.R.* v. *Scottish Automobile and General Insurance Co., Ltd.* (1932) 16 T.C. 381; *Emro Investments* v. *Allen* (1954) 35 T.C. 305 (investment company carrying on the trade of dealing in property in fact).

practice of the company and the frequency of its dealings (*m*). The memorandum of the company is some indication of the nature of its trade, but it is not conclusive either way (*n*). There is, of course, no technical objection to a company's carrying on two businesses at the same time, one that of dealing in property and the other that of holding property as an investment, though it will not escape tax merely by saying that a particular development was intended as an investment rather than a development with a view to profit (*o*).

Development by two Companies. Consideration of what we have just said may prompt the question whether a development should be carried out by two companies. Company A may decide to buy land as an investment and employ company B to do the developing, company B to receive the premiums obtained on the sales of the flats and company A to retain the rents. If this course is to be followed it should be decided upon before the land is bought, as it is pointless incurring the extra expense of transferring from one company to another after purchase and possibly after building has started, and there may well be confusion over the financing of the building.

METHOD OF COMPUTING THE PROFIT. It may often happen that the developer does not receive the whole of his profits as he sells the flats. In the ordinary case the flat owner will pay a premium and a rent or rent-charge and, where a building society is financing the various flat-owners, there may be a continuing arrangement under which a portion of the premium is left in the hands of the building society or part of the premium may be left outstanding on mortgage. With regard to the rents, where the transaction is carried out by means of leases, the House of Lords decided in *Hughes* v. *Utting* (*q*) that, as the developer did not part with the whole of his interest in the land when he granted the leases, the balance represented by the rents was not necessarily to be brought in at the market value thereof. The land was the

(*m*) *Page* v. *Pogson* (1954) 35 T.C. 545; *Cadwallader* v. *Wheeler* (1955) 48 R. & I.T. 779.

(*n*) *Balgownie Land Trust, Ltd.* v. *C.I.R.* (1929) 14 T.C. 684; *Granville Building Co.* v. *Oxby* (1954) 35 T.C. 245; *C.I.R.* v. *Scottish Automobile and General Insurance Co., Ltd., supra.*

(*o*) *Cf. Granville Building Co.* v. *Oxby, supra* (where the company, who were builders, had no power in their memorandum to invest in buildings, and were held liable on a profit made on a building retained by them for some time), with *Glasgow Heritable Trust* v. *C.I.R.* (1954) 35 T.C. 196 (a company, formed by builders to hold land as an investment, held not liable for profits realised on sale); *Harvey* v. *Caulcott* (1952) 33 T.C. 159; *Cadwallader* v. *Wheeler, supra.*

(*q*) [1940] A.C. 463.

developer's stock-in-trade and, like any other stock, it had to be brought into account at the cost price or market price, whichever was the lower.

There is no particular method laid down in the cases for arriving at the cost price of the rents. In *Hughes* v. *Utting* (*r*) the cost was arrived at by taking a proportionate part of the cost of the land and of the expenditure on roads and sewers, no part of the expenditure on the building being taken into consideration. A simpler method that we have known adopted is to apportion the total cost of the development (cost of land, ways, buildings, etc.) between the premiums and the rents. The rents are valued at so many years' purchase and the cost of the rents is taken as being the product of the following:—

$$\frac{\text{value of rents}}{\text{value of rents} + \text{total premiums}} \times \text{cost of development.}$$

The value of the rents should be between ten and fifteen years' purchase, for the leases cast certain administrative burdens on the developer or his successors in title, and have not as great a value as ordinary ground rents.

The *ratio decidendi* of *Hughes* v. *Utting* was that the developer in granting leases does not part with the whole of his interest in the land and the earlier House of Lords decision in *Emery & Sons* v. *C. I. R.* (*s*), that Scottish ground annuals, which may be likened to rentcharges in perpetuity, must always be brought in at market value, was distinguished on this ground. Despite the earlier decision, the Inland Revenue are apparently content to treat rentcharges reserved on the conveyance of flats in fee simple as on the same footing as rents reserved on leases, though, strictly speaking, they would seem to be entitled to maintain that *Hughes* v. *Utting* is inapplicable in such a case.

When the rents or rentcharges are sold, the amount by which the sale price exceeds the cost price or market value brought into account as described above must be brought in as a receipt in the year of realisation (*t*).

Where there is a continuing arrangement between the developer and a building society, the result will be that part of the premium on the sale of the flat will be retained by the building society. The amount so retained is, in theory, treated in a similar way to a rent and is brought in at its value at the time of the sale. In practice it is not usually feasible to value the amount and, in

(*r*) [1940] A.C. 463, at p. 465.
(*s*) [1937] A.C. 91.
(*t*) *Hughes* v. *Utting*, *supra*.

that event, the actual amounts of money released to the developer will be brought into account in the years during which they are released (*u*).

Again, where the developer allows part of the premium to remain outstanding on a second mortgage, that part is only brought into account at a valuation (*a*). The method of valuation has not been settled and some inspectors seek to bring the amount outstanding into account at its face value. This is clearly wrong as being directly contrary to what the House of Lords decided in *Absalom* v. *Talbot* (*a*). Lord Russell of Killowen expressed the view that the proper method was the same as in the case of a continuing arrangement, and that the taxpayer should be assessed in any year in the amount of the actual moneys falling to be paid in that year, but he did not think that this was the only method. Lord Atkin, with whom Lord Thankerton agreed, said that there may be more than one method of arriving at the valuation and suggested two methods, disagreeing with Lord Russell of Killowen's method. It would be sufficient, he thought, to leave the matter to the Commissioners and, "in default of satisfactory valuation being possible, they may have to fall back on the method of taxing instalments in each year as they fall due." When it is borne in mind that part of the developer's profit has been held back by the building society and a further part left outstanding on a second mortgage, it will be seen that it is most desirable that tax should only be paid as the money is in fact received by the developer. If the inspector insists on a valuation there should be a substantial discount from the face value, as it is obvious from the circumstances that the second mortgage could not be liquidated easily.

(*u*) *Harrison* v. *John Cronk & Sons* [1937] A.C. 185; *Chibbett* v. *Harold Brookfield, Ltd.* [1952] 2 Q.B. 677.
(*a*) [1944] A.C. 204.

THE BENEFICIAL OWNERSHIP OF THE MATRIMONIAL HOME

By A. G. Guest, Barrister-at-Law

The purpose of this article is to examine the present state of the law concerning the beneficial ownership of the matrimonial home and, as far as possible, to formulate the principles which emerge from this examination.

Few topics in the law today present such an interesting illustration of judicial initiative as that of the matrimonial home (*a*). The alteration in the conception of the relationship of husband and wife which led to the passing of the Married Women's Property Act, 1882, and of the Law Reform (Married Women and Tortfeasors) Act, 1935, has not yet spent its force. Many inconsistencies and injustices do still remain (*b*) and it is not yet true to say that equality of status has been completely achieved. But the changes which have taken place in respect of the beneficial ownership of the matrimonial home have been directed at ensuring that, if the marriage comes to grief, both spouses should receive their fair share of the proceeds of the sale of the premises. To achieve this, the courts have, to a great extent, jettisoned the strict equitable rules previously applied to matrimonial property and substituted a wider discretionary power based on the fact of the husband and wife relationship.

This development has been made possible by a liberal interpretation of section 17 of the Married Women's Property Act, 1882, which provides that:

> "In any question between husband and wife as to the title to or possession of property, either party . . . may apply by summons or otherwise in a summary way to any judge of the High Court . . . and the judge . . . may make such order with respect to the property in dispute . . . as he thinks fit."

At first sight it might seem that this section merely conferred on the parties the right to have their dispute settled by summary

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(*a*) The occupation licence of the deserted wife has been a special object of attention and there is now a considerable body of periodical literature on this point. For a list of the leading articles see (1955) 33 Can. Bar Rev. 609.

(*b*) See Professor O. Kahn-Freund in (1952) 15 M.L.R. 133; (1953) 16 M.L.R. 34 and 148.

proceedings. But the courts have interpreted the words "as he thinks fit" as giving to the judge a wide discretionary power to make such an order as he, in the circumstances, thinks fair and just (*c*). The exact extent of this discretionary power is the cause of the present uncertainty in the law. On the one hand it could be construed as giving the court power to vary the strict legal rights of the parties. On the other hand it could be confined merely to the provision of remedies to implement those rights already established.

When a house is bought by a husband and wife to be used jointly by them as their matrimonial home, it must be very seldom that they sit down and think out who is to have the beneficial ownership or in what proportions they are to share it. Paradoxically the law normally looks at the intention of the parties at the time of the purchase in order to determine their rights upon the break up of the marriage. As might be imagined, the task of determining this intention is not an easy one and it is further complicated by the interaction of certain equitable rules relating to implied trusts.

Prima facie the person in whom the legal estate is vested is also the beneficial owner. But if the purchase money is supplied by one spouse and the conveyance taken in the name of the other, equity may separate the legal and beneficial ownership of the premises. If it was the wife who put up the money, there is a presumption of a resulting trust in her favour. If it was the husband who did so, then he is presumed to have made an advancement or gift to her. Both of these presumptions are, of course, rebuttable by evidence of the actual intention of the parties at the time of the purchase (*d*). It may be that the reason why the conveyance was taken in the wife's name was because the husband was away on active service with the forces (*e*) or because it was more convenient to have the property conveyed into their joint names (*f*). In each case the particular circumstances of the purchase must be considered. The acts and declaration of the parties before or at the time of the purchase are admissible in evidence either for or against the party who did the act or made the declaration, but subsequent acts and declarations are admissible

(*c*) See Denning J. in *H.* v. *H.* (1947) 63 T.L.R. 645, at p. 646; Bucknill L.J. in *Newgrosh* v. *Newgrosh* (1950) 1 C.L.C. 4557, cited in *Rimmer* v. *Rimmer* [1953] 1 Q.B. 63, at p. 68.

(*d*) Snell's *Principles of Equity* (24th ed.), at p. 153; E. F. George (1952) 16 Conv.(N.S.) 27; *Tuomi* v. *Tuomi* [1951] 4 D.L.R. 206.

(*e*) *e.g.*, the joint bank account in *Jones* v. *Maynard* [1951] Ch. 572.

(*f*) *e.g.*, the joint bank account in *Marshal* v. *Cruttwell* (1875) L.R. 20 Eq. 328 and that in *Hoddinott* v. *Hoddinott* [1949] 2 K.B. 406 out of which the furniture was purchased.

as evidence only against the party who made them and not in his favour (*g*).

In the absence of any evidence of a contrary intention the following situations will be seen to arise:—

1. *The Husband provides the purchase money, and*
   (a) the conveyance is taken in the husband's name. He is both the legal and beneficial owner.
   (b) the conveyance is taken in the wife's name. A presumption of advancement arises and the wife enjoys both the legal and beneficial ownership (*h*).
   (c) the conveyance is taken in their joint names. If no trust is expressly declared, the husband and wife will be joint tenants at law and in equity, for he is presumed to have made to his wife a gift of a half-share in the house (*i*).
2. *The Wife provides the purchase money, and*
   (a) the conveyance is taken in the husband's name. A resulting trust arises in favour of the wife (*k*).
   (b) the conveyance is taken in the name of the wife. She is both the legal and beneficial owner.
   (c) the conveyance is taken in their joint names. It seems that the husband and wife would be joint tenants at law and hold the premises on a resulting trust in favour of the wife (*l*).

More difficulty is experienced when both spouses jointly provide the purchase money. Normally where two strangers purchase property with purchase money provided in unequal shares, the legal owner will hold it upon trust for both of them as tenants in common in proportion to their shares in the purchase money advanced (*m*). If, on the other hand, they contribute equally

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(*g*) *Warren* v. *Gurney* [1944] 2 All E.R. 472; *Shephard* v. *Cartwright* [1955] A.C. 431.

(*h*) *Dyer* v. *Dyer* (1788) 2 Cox Eq. 92; *Re Eykyn's Trusts* (1877) 6 Ch.D. 115.

(*i*) *Dummer* v. *Pitcher* (1833) 2 My. & K. 262; *Dunbar* v. *Dunbar* [1909] 2 Ch. 639.

(*k*) *Mercier* v. *Mercier* [1903] 2 Ch. 98.

(*l*) On the analogy of *Re Flamank*, *Wood* v. *Cock* (1889) 40 Ch.D. 461.

(*m*) *Lake* v. *Gibson* (1729) 1 Eq.Cas. 290, *per* Sir J. Jekyll at p. 291; *Rigden* v. *Vallier*, 3 Atk. 731 *per* Lord Hardwicke at p. 735; *Bull* v. *Bull* [1955] 1 Q.B. 234. In this last case it was held that a statutory trust for sale would arise. The legal owner would not be able to dispose of the premises without either the concurrence of the co-trustee or an order of the court, for he would not, as sole trustee, be able to give a valid receipt for the purchase money. If this decision is correct (see a criticism in 18 M.L.R. 303) it would indicate that purchasers from the legal owner may have to inquire into the way the purchase money was made up in order to ensure an effective discharge, provided there is something to put them on inquiry in the first place. The same considerations would apply in the case of joint advances by a husband and wife: see Denning L.J. in *Cobb* v. *Cobb* [1955] 1 W.L.R. 731 at p. 734.

they become joint tenants in equity and, on the death of one of them, the survivor will take the whole beneficial interest for himself. The same principles ought to apply in the case of the husband and wife. So, if they contribute in unequal shares, the following situations arise:—

3. *Both spouses provide the purchase money, and*
   (a) the conveyance is taken in the husband's name. He holds the legal estate in trust for himself and his wife as tenants in common.
   (b) the conveyance is taken in the name of the wife. The husband is presumed to have made her a gift of his share of the money and she will be the legal and beneficial owner (*n*).
   (c) the conveyance is taken in their joint names. They are joint tenants at law in trust for themselves as tenants in common in equity (*o*).

It is important to note, however, that the operative time in all these cases is the time of the purchase (*p*). No presumption of a resulting trust or of an advancement can arise unless, at the time of the purchase, one spouse puts up the money or impliedly undertakes to do so and the conveyance is taken in the name of the other. If the presumptions are to be varied or rebutted, this must be done by evidence of the parties' true intention at this time. This, too, is the moment when the proportions in which they are to enjoy the beneficial ownership of the house as tenants in common normally become fixed. In *Re Roger's Question* (*q*) Evershed M.R. said:

> "What the judge must try to do in all such cases is, after seeing and hearing the witnesses, to try to conclude what at the time was in the parties' minds and then to make an order which, in the changed conditions, now fairly gives effect in law to what the parties, in the judge's finding, must be taken to have intended at the time of the transaction itself (*r*)."

In that case, the wife had herself opened negotiations for the purchase of a house for £1,000. A deposit of £100 was paid by her on the signing of the contract although both the contract and the conveyance were executed in the husband's name. The balance of the purchase price was raised by a mortgage of the

(*n*) *Moate* v. *Moate* [1948] 2 All E.R. 486.
(*o*) *Lake* v. *Gibson* (1729) 1 Eq.Cas. 290.
(*p*) See E. F. George (1952) 16 Conv.(N.S.) 27, at p. 29.
(*q*) [1948] 1 All E.R. 328.
(*r*) *Ibid.*, at pp. 328, 329.

house to a building society and the husband paid the instalments on the mortgage. On the break up of the marriage he claimed that he was the beneficial owner of the house subject only to the repayment of the £100 which, he said, was a loan to him by the wife. She, in her turn, claimed the entire beneficial ownership on the ground that the house was always intended to be hers. The Court of Appeal found that, so far as could be ascertained, the intention of the parties at the time of the contract was that the wife should provide the deposit but that the husband should pay off the mortgage. They accordingly held that the husband should hold the house on trust for sale and that he and his wife should be entitled to the proceeds of sale in the same proportions of nine-tenths and one-tenth.

It may happen, however, that some time after the purchase and during the course of the marriage one of the spouses, *e.g.*, the wife, helps to pay off a mortgage by means of her separate property or savings. Strictly speaking, one would not expect this to affect the title to the home. At the most she would have a lien on the property to the extent of the money advanced. More probably she would be considered merely to have made a loan to her husband (*s*). The original proportions and presumptions would not be affected in any way. But the tendency of the most recent cases is against holding that the rights of the parties are irrevocably determined at the time of the purchase, indeed, it is against any proportional division whatsoever. The source of this development is a feeling that, once the husband and wife have contributed jointly to such a fundamental and continuing venture as the matrimonial home, it would be unreal to go back and dissect the contributions which each had made. In an oft-quoted passage in *Balfour* v. *Balfour* (*t*) Atkin L.J., dealing with domestic arrangements between husband and wife, said:

> "Agreements such as these are outside the realm of contracts altogether. The common law does not regulate the form of agreements between spouses. Their promises are not sealed with seals and sealing wax. The consideration that really obtains for them is that natural love and affection which counts for so little in these cold Courts. The terms may be repudiated, varied or renewed as performance proceeds or as disagreements develop, and the principles of the common law as to exoneration and discharge and accord and satisfaction are such as find no place in the domestic code. The parties

(*s*) See generally on this point E. F. George (1952) 16 Conv.(N.S.) 27, "Disputes over the Matrimonial Home."
(*t*) [1919] 2 K.B. 571.

themselves are advocates, judges, Courts, sheriff's officer and reporter. In respect of these promises each house is a domain into which the King's writ does not seek to run, and to which his officers do not seek to be admitted (*u*)."

It is this same feeling which has led the courts to hold that the same considerations do not apply to husband and wife as in the case of strangers. Upon marriage a pooling of resources takes place and it becomes no longer possible to uncover the saving or sacrifices made by each spouse to pay off a debt which both regard as their own. In such circumstances the best equity is that of equality.

In order to achieve their object the judges have made full use of the discretionary power conferred upon them by section 17 of the Married Women's Property Act (*a*). In *Rimmer* v. *Rimmer* (*b*) a house was purchased by a husband and wife before the outbreak of the war. They paid £460 for it and the conveyance was taken in the husband's name. The wife contributed £29 of the purchase money and the balance of £431 was paid by means of a loan to the husband from a building society and secured by a mortgage of the house. The husband and wife were both wage earners and the loan was repaid as to £151 out of the housekeeping money supplied by the husband and as to £280 by the wife out of her separate earnings while the husband was away in the merchant navy. The marriage came to grief and, in 1952, the husband sold the house for £2,117. The wife filed an application under section 17 of the Married Women's Property Act claiming a proportion of the sum realised on the sale. Different decisions were reached at the different stages of the action:

(i) The Registrar of the county court decided that the proceeds should be divided in proportion to the overall capital contributions of the parties. On this showing the wife got £1,423.

(ii) The county court judge made his decision according to the strict principles already discussed. The beneficial interests of the parties were determined at the time of the purchase and they were to share the proceeds of sale in proportion to their contributions at that time. The sum advanced by the wife towards the redemption of the mortgage was to be treated as a loan by her to the husband. On this division she got £413.

(*u*) At p. 579.

(*a*) See Evershed M.R. [1953] 1 Q.B. 63, at p. 68, and the Report of the Royal Commission on Marriage and Divorce (Cmd. 9678), p. 163.

(*b*) [1953] 1 Q.B. 63, noted (1953) 69 L.Q.R. 11.

(iii) The Court of Appeal decided that the proceeds should be divided equally, for equality is equity (*c*).

In arriving at this decision, the Court of Appeal were obviously influenced by the fact that the appreciation in the value of the house had rendered the division one of what was largely a windfall (*d*). But the equitable division was itself made possible by use of the discretionary power given to the court by section 17 and also by citing an analogous development which had taken place in regard to joint banking accounts of husband and wife (*e*). Evershed M.R., however, used the section to move away from the principle which he had previously laid down in *Re Roger's Question* (*f*):

> "I think that in each case the question is, on all the facts of the case, what is the fair and just answer to be given to the question posed, having regard not merely to what occurred at the time when the property was originally purchased but also having regard to the light which the conduct of the husband and wife throws on their relationship as contributors to the acquisition of the property which was their joint matrimonial home (*g*)."

Denning L.J. went even further:

> "It seems to me that when the parties, by their joint efforts, save money to buy a house, which is intended as a continuing provision for them both, the proper presumption is that the beneficial interest belongs to them both jointly (*h*)."

In his judgment, Romer L.J. was somewhat more cautious. He agreed that different considerations applied to husband and wife than those which applied to strangers and that the principle of equality was peculiarly applicable to their disputes. But he did not rule out a proportional division altogether where the circumstances were different (*i*).

It is difficult to see quite how far this decision should be taken. There is no doubt that, on the facts, an equal division was the most just solution. The wife's deposit showed that she was intended to have some share in the beneficial interest and her subsequent payments indicated that they were both contributing to a joint venture. But had she provided no initial

(*c*) See *Re Dickens* [1935] Ch. 267, 269.
(*d*) [1953] 1 Q.B. 63, *per* Evershed M.R. at p. 67.
(*e*) *Jones* v. *Maynard* [1951] Ch. 572.
(*f*) [1948] 1 All E.R. 328, at pp. 328, 329, cited *supra*, p. 470.
(*g*) [1953] 1 Q.B. 63, at p. 71.
(*h*) *Ibid.*, at p. 74.
(*i*) *Ibid.*, at p. 76.

deposit, or had she contributed a small sum, say five pounds, towards the repayment of the mortgage loan (*k*), it might be that equality would not be equity and that a proportional division would be more just and fair.

This case was followed shortly afterwards by the difficult decision in *Tunstall* v. *Tunstall* (*l*). A husband and wife bought a house, furniture and a car out of their joint resources in the name of the husband. In 1950 they separated and this property was sold for £2,360. Two years later the wife took out a summons under section 17 of the Married Women's Property Act to retrieve £355 which was the amount contributed by her to the purchase of the property sold. But during this period the husband had paid the wife's maintenance out of the proceeds of sale and the funds were nearly exhausted—in fact, only £470 remained. The Master before whom the application was heard made an order that they should share equally in the proceeds of sale. The Court of Appeal, however, held that the proceedings under this section were misconceived and that no order could be made. Lord Goddard C.J. said that there was no question as to "the title to or possession of property" to be decided since the husband was legally entitled to sell his own property. If the wife had taken proceedings before the sale and claimed a share, perhaps section 17 would have been appropriate. But the proceeds of sale had nearly gone and there was nothing upon which an order of the court could operate. Had the money been in the hands of a bank or of a solicitor, or had the proceeds of sale consisted of chattels or of stocks and shares, an order could have been made, for there is express provision made by the section for such events. But it did not give any power to give a money judgment.

In an illuminating criticism of this case (*m*) R. E. Megarry points out that, if this decision is correct, the jurisdiction of the court under section 17 depends on the form in which the proceeds are at the time of the action. The safest thing for the husband is cash in hand. He should avoid depositing the money with his bank or purchasing an identifiable asset which might be traced. But there still remains the serious problem of reconciling this case with *Rimmer* v. *Rimmer* (*n*). Even if it is conceded that once the proceeds have been dissipated, there is no power to give a judgment *in personam* to force the husband to repay, nevertheless there seems no reason at all why an order *in rem* could

(*k*) A possibility suggested by Romer L.J. at p. 76.
(*l*) [1953] 1 W.L.R. 770. The decision confirmed a well-settled rule.
(*m*) (1953) 69 L.Q.R. 308.
(*n*) [1953] 1 Q.B. 63.

not have been made as to the remaining £470 in the hands of the husband at the time. The case cannot, surely, have decided that, once any portion, however small, of the proceeds of sale have been spent, the jurisdiction of the court would therefore be ousted. Such a decision would be patently ridiculous.

The most recent case on this subject is that of *Cobb* v. *Cobb* (*o*). It differs from the previous cases in that the matrimonial home was conveyed to the husband and wife jointly. They both contributed equal amounts to the initial deposit and both were parties to the mortgage deed for the balance. But the mortgagees were the husband's employers and he made an arrangement with them to have £3 a week deducted from his salary in order to pay off the mortgage loan. The wife did not contribute at all, but she did pay most of the household expenses out of her own earnings. When the marriage came to grief, the husband made an application under section 17 claiming that the house was his. The county court judge held that, although the parties originally intended that the house should be owned in equal shares, the fact that the husband had repaid the mortgage money operated to vary the strict legal rights of the parties. He ordered the house to be sold. The proceeds were to be paid to the husband subject only to the repayment of the balance of the money still due on the mortgage and of the initial sum advanced by the wife. The Court of Appeal (Denning, Birkett and Romer L.JJ.) discharged his order and made a new order declaring that the beneficial interest in the house was vested in the husband and wife in equal shares. But they held that, since the joint matrimonial relationship had broken down and the wife no longer performed wifely duties, she became liable for a half-share of the outstanding mortgage payments from the date of the break-down of the marriage. In his judgment Romer L.J. said (*p*):

> ". . . I know of no power that the court has under section 17 to vary agreed or established titles to property. It has power to ascertain the respective rights of husband and wife to disputed property, and frequently has to do so on very little material; but where, as here, the original rights to property are established by the evidence, and those rights have not been varied by subsequent agreement, the court cannot, in my opinion, under section 17 vary those rights merely because it thinks that in the light of subsequent events the original agreement was unfair."

(*o*) [1955] 1 W.L.R. 731.
(*p*) *Ibid.*, at p. 736.

Denning L.J., with whom Birkett L.J. agreed, adopted a more radical basis for his decision (*q*):

> ". . . when both husband and wife contribute to the cost, and the property is intended to be a continuing provision for them during their joint lives, the court leans towards the view that the property belongs to them both jointly in equal shares; and this is so, even though the conveyance is taken in the name of one of them only and their contributions to the cost are unequal. All the more so when the property is taken, as here, in their joint names. . . ."

The court was, however, agreed that an order for sale should not be made.

It may be that the practical results of these two approaches are not so great as at first appears. The decision in *Rimmer* v. *Rimmer* can be justified either on the assumption that equality is equity or on the grounds that the husband and wife had, by their conduct, varied their original rights by subsequent agreement. But the state of the law is not entirely satisfactory. Besides the difficulties inherent in the decision in *Tunstall* v. *Tunstall* it is not easy for counsel to advise with any certainty on the division of the proceeds of sale of the matrimonial home. Only the most general principles can be laid down:

1. The beneficial ownership of the matrimonial home is normally determined by the intention of the parties at the time of the purchase.

2. This may, however, be varied by a later agreement between the parties as ascertained from their subsequent actions, provided that these are clear and unequivocal.

3. Where it is not clear to whom the beneficial interest belongs or where it is evident that the parties intended to share the beneficial interest but it is not clear in what proportions, then equality is equity.

4. Although the exercise of the power conferred by section 17 of the Married Women's Property Act, 1882, has been termed "palm tree justice (*r*)," its operation is by no means as arbitrary as that phrase would suggest. Encouraged by the width of its provisions, the courts are feeling their way towards a limited form of community of property between husband and wife.*

(*q*) *Ibid.*, at p. 734.

(*r*) [1953] 1 Q.B. 63, *per* Evershed M.R. at p. 68, citing Bucknill L.J. in *Newgrosh* v. *Newgrosh* (1950) 1 C.L.C. 4557.

* I wish to express my gratitude to Professor O. Kahn-Freund, LL.M., DR.JUR., and to Professor A. L. Goodhart, K.B.E., Q.C., for reading this article in manuscript and making many helpful suggestions.

DISCHARGE AND MODIFICATION OF RESTRICTIVE COVENANTS—I

By G. H. Newsom, Q.C.

Law of Property Act, 1925, Section 84

Before 1926 an owner of land who wished to develop it but had on his title restrictive covenants, however old or obscure, incompatible with such development, was compelled to take the risk that he would be sued upon them if he put his plans into effect. In many cases, no doubt, the danger was illusory, and often the action would have failed. But the anxiety and expense even of successful proceedings may be considerable, and their pendency may well occasion costly delays. Section 84 of the Law of Property Act, 1925, is designed to enable an owner of land to establish for certain whether the land is subject to valid restrictions, and if so what their effect is. Further, if there are valid restrictions which serve no useful and legitimate purpose, provisions are made for their discharge or modification.

Jurisdiction of the Court

The section has two operative subsections. It will be convenient to refer first to subsection (2). Power is thereby given to the court (in practice, the Chancery Division) upon the application of any person interested " (a) to declare whether or not in any particular case any freehold land is affected by a restriction imposed by any instrument; or (b) to declare what, upon the true construction of any instrument purporting to impose a restriction, is the nature and extent of the restriction thereby imposed, and whether the same is enforceable and if so by whom." By subsection (12), as amended by the Landlord and Tenant Act, 1954, s. 52, the provisions of the section relating to restrictions affecting freeholds are to apply also to restrictions affecting land held for a term of more than forty years, of which at least twenty-five years have expired, unless the lease is a mining lease.

A good deal of use has been made of the provisions of subsection (2), especially in the last few years, though it is still not invoked as often as it usefully could be. It will be discussed further in a later article. The important point for the immediate

purpose is that Parliament has by this subsection provided means for the convenient determination of certain questions of law: such questions, as is proper, are entrusted to the court.

Jurisdiction of the Lands Tribunal

It appears, however, that Parliament recognised that there were also cases where land was, or might well be, affected by valid restrictions, and where it was in the general interest that an alteration of those restrictions should be forced on the person claiming to be entitled to the benefit of them. No problem arises where that person is willing to modify the restrictions, since that can be done by deed. But in some cases he may only be willing to do so on onerous terms, or he may be unwilling to do so at all. In such a case he may have a legitimate reason for his attitude, or he may merely be making unreasonable use of his legal rights for one reason or another. If the latter, then the restrictions should be discharged or modified by means of an application made under section 84 (1) of the Act.

Upon such an application, it may often be needful and important to consider incidental matters of law, but the central question is generally one upon which the views of a person skilled in practical estate management are quite as useful as those of a lawyer. Thus, it was originally provided that applications under subsection (1) of section 84 should be to "the Authority," which was defined as meaning an Official Arbitrator appointed for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919, and selected by the Reference Committee under that Act. The Authority was therefore a person normally concerned with compensation for the compulsory acquisition of land. This arrangement did not, perhaps, allow sufficiently for the difficult questions of law to which the jurisdiction under section 84 (1) gives rise: it also tended to suggest that the problem was not so much whether the restriction should be discharged or modified as how much money (if any) should be paid by way of compensation for the discharge or modification sought, which was to be granted if at all reasonable (*a*).

In these circumstances the Lands Tribunal Act, 1949, effected a valuable amendment, since it substituted the Lands Tribunal for the Authority. The Lands Tribunal is a mixed body of lawyers and surveyors, who have synthesised their points of view. Consequently, although a single member usually constitutes the Tribunal

(*a*) For an example, see the authority's decision in *Re Henderson* [1940] Ch. 835, reversed in the Chancery Division.

in cases under section 84 (1), it is clear from the written decisions of the Tribunal that it makes no difference to the way in which the case is handled whether the Tribunal consists of a legal member or not (*b*).

Decisions of the Lands Tribunal

In the course of more than six years the Tribunal has issued about 150 reasoned decisions in writing upon contested applications under section 84 (1), and it has also dealt in a less formal manner with a number of uncontroversial applications. The written decisions are now sufficient in number, and cover a sufficiently long period, to give a coherent impression of the approach which the Tribunal makes to applications under section 84 and of the principles on which it acts or declines to act. There are, to be sure, one or two points upon which decisions of the Tribunal conflict with one another, and some points are still surrounded by a degree of obscurity. But the decisions as a whole are remarkably consistent and enable one to obtain a far better idea of the prospects of a given application under section 84 (1) than was possible in earlier days.

When the Tribunal has reached a decision, its reasons for so doing are formulated in writing and are duplicated. Copies go to the parties, but they are not on sale to the public, nor are they otherwise easy to obtain. It has thus been very difficult for the practitioner to examine a complete set of them, so that he has been to some extent working in the dark. In these circumstances the publishers of the *Planning and Compensation Reports* recently invited me to select from the decisions a sufficient number to give an accurate picture of the Tribunal's handling of cases under section 84 (1). The cases which I have selected are being published with headnotes in a special volume (Volume 7) of the *Planning and Compensation Reports*.

The decisions of the Lands Tribunal during the first two or three years were almost all of importance and almost all appear in the special volume; but they were comparatively few in number, since it was not until about 1954 that building and development began to increase rapidly as a consequence of the abolition by the Town and Country Planning Act, 1953, of the development charge imposed by the Town and Country Planning Act, 1947,

(*b*) Thus the legal members frequently express their views on the surveyor's question whether there has been a change in the character of the neighbourhood and the surveyors decide on occasions whether there was a scheme of development within *Elliston* v. *Reacher* [1908] 2 Ch. 374: see *Re Escritt's Application* LP/73/1953.

and of the campaign to encourage the building of many more houses. It is clear that the Tribunal's principles and practice had, by 1955, become comparatively well settled. The moment therefore seems to have come to attempt to sum up the results of the first phase of the Tribunal's activities in relation to section 84 (1).

VOLUME 7 OF THE PLANNING AND COMPENSATION REPORTS

Volume 7 of the *Planning and Compensation Reports* also contains the text of all (*c*) the cases on either subsection (1) or (2) of section 84 which are reported in *The Law Reports*, in some cases with new headnotes. There have in fact been extremely few cases in court on section 84 (1). Such cases reach the court only by way of appeal, the opportunities for which are restricted. Before the Lands Tribunal Act, 1949, the appeal from the Authority lay to the Chancery Division and was by way of re-hearing (*d*). It had to be dealt with upon evidence given orally or by affidavit, a comparatively expensive method, and one which left the whole matter open to the court's consideration in those cases where an appeal lay at all. But the right of appeal was held (*e*) to be available only where the Authority had modified or discharged a restriction, and not where it had declined to do so. At present an appeal lies to the Court of Appeal from a decision of the Lands Tribunal either granting or dismissing an application; but this right of appeal is by way of case stated, so that the powers of the Court of Appeal are distinctly more limited than were those of the Chancery Division under the former procedure. Few appeals have been heard, and only two are reported since the Lands Tribunal took charge of the subject, namely *Re Truman, Hanbury, Buxton & Co., Ltd.'s Application* (*f*) and *Driscoll* v. *Church Commissioners for England* (*g*).

There has been a rather larger number of reported cases in the Chancery Division on section 84 (2); of these, *Re Sunnyfield* (*h*), which deals briefly with the procedure, is much the most important. The others, though interesting as showing how the procedure under section 84 (2) operates, are really reported as dealing with points in the general law as to the enforceability

(*c*) Except *Re 108 Lancaster Gate* [1933] Ch. 419, which was on the provisions as to appeals that have since been abrogated.
(*d*) *Re Henderson* [1940] Ch. 835 at p. 839.
(*e*) In *Re 108 Lancaster Gate* [1933] Ch. 419.
(*f*) [1956] 1 Q.B. 261.
(*g*) [1956] 3 W.L.R. 996.
(*h*) [1932] 1 Ch. 79.

of restrictive covenants. There has been a fair number of unreported cases under section 84 (2), especially in the last eighteen months: it is normal for the applicant to find that he has no opponent at the hearing, so that his task is not to defeat a person claiming the benefit of the covenant but to persuade the court that the case is a proper one for an order *in rem* (*k*) declaring the covenant unenforceable. In these circumstances there has been little opportunity for the appearance of cases under section 84 (2) in the Reports.

It is clear, however, from the Lands Tribunal's cases in Volume 7 of the *Planning and Compensation Reports* that in several of them the applicant realised that there was probably no one in a position to enforce the covenant and argued to that effect in the Tribunal. Moreover, it is certain that in at least some of these cases the applicant's contention was correct. If so, he could have obtained from the court a declaration that the covenant was unenforceable, and that would have been the end of it. But the Lands Tribunal, whose concern is not the enforceability of the covenant so much as its utility if enforceable, felt unable, in some of those cases, to grant any relief. It would be interesting to know which of these unsuccessful applicants made a further attempt before the court to upset the covenants, and why they had not applied to the court in the first place.

Subsection (1) of Section 84

The main jurisdiction of the Lands Tribunal to discharge or modify restrictions is derived from the Law of Property Act, 1925, s. 84 (1), which is in the following terms (*l*):

> "The Authority (*m*) hereinafter defined shall (without prejudice to any concurrent jurisdiction of the court) have power from time to time, on the application of any person interested in any freehold land affected by any restriction arising under covenant or otherwise as to the user thereof or the building thereon, by order wholly or partially to discharge or modify any such restriction (subject or not to the payment by the applicant of compensation to any person suffering loss in consequence of the order) on being satisfied—
>
> (a) that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the Authority may deem material, the restriction ought to be deemed obsolete, or that the continued existence thereof

(*k*) See Law of Property Act, s. 84 (5).
(*l*) There are also a few minor sources of a similar jurisdiction.
(*m*) The jurisdiction conferred on the authority was transferred to the Lands Tribunal by the Lands Tribunal Act, 1949, s. 1 (4) (a).

would impede the reasonable user of land for public or private purposes without securing practical benefits to other persons, or, as the case may be, would unless modified so impede such user; or

(b) that the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the property to which the benefit of the restriction is annexed, have agreed, either expressly or by implication, by their acts or omissions, to the same being discharged or modified; or

(c) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction;

Provided that no compensation shall be payable in respect of the discharge or modification of a restriction by reason of any advantage thereby accruing to the owner of the land affected by the restriction, unless the person entitled to the benefit of the restriction also suffers loss in consequence of the discharge or modification, nor shall any compensation be payable in excess of such loss; but this provision shall not affect any right to compensation where the person claiming the compensation proves that by reason of the imposition of the restriction, the amount of the consideration paid for the acquisition of the land was reduced."

The Importance of Paragraph (c)

Subsection (1) of section 84 has three paragraphs, and paragraph (a) is itself in two parts. It is commonly supposed that the Tribunal is mainly concerned with cases in which the chief issue is whether there has been a change in the character of the neighbourhood. This belief doubtless derives from the fact that change in the character of the neighbourhood is one of the subjects of the first limb of paragraph (a). But in practice it is comparatively unusual for the Tribunal to act on this ground. For the Tribunal to apply the first limb of paragraph (a) in this way, it must decide a number of somewhat complex questions, the first of which is what a "neighbourhood" is. The problem under paragraph (c) is often far simpler. Under that paragraph, the applicant is required to prove that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction. There may, no doubt, be very serious difficulties in deciding who is entitled to the benefit of the restriction. But in some cases the applicant can prove that no one could possibly

be injured by the proposed order. If so, none of those entitled to the benefit of the restriction could be so injured, and the case is established. For practical purposes, moreover, the same result can be achieved by the applicant proving that his project will not injure any of the objectors: the Tribunal has careful arrangements for giving notice to anyone who might be entitled to object (a class at least as wide as the persons possibly entitled to the benefit of the covenant). If, then, a person who could have been an objector does not appear, it is hardly necessary to be more zealous for his possible rights than he is himself. Moreover, it could be said of an absent potential objector with some force that he has impliedly consented to the application within paragraph (b) of section 84 (1).

Thus in *Re Harte-Lovelace's Application* (*n*) the applicant owned a large house which was subject to a restriction prohibiting its user except as a private residence. It was too big to be so used and was falling into decay. An application to have the covenant modified so that the house might be used for business offices was granted on the ground, *inter alia*, that this user would not injure the principal objector. Similarly, in *Re Wreford's Application* (*o*) the applicant obtained an order enabling him to build two houses instead of one on his plot, on the sole ground that the erection of these two houses would not depreciate the property of the one objector. Again, in *Re Charrington & Co., Ltd.'s Application* (*p*) the question was whether a covenant forbidding the sale of intoxicants should be discharged in order to enable an off-licence to be moved from an unrestricted site, which had been bombed, to a site a few yards away and just on the restricted land. It was held that this trivial change could not "make any difference to the conditions relating to the sale of intoxicating liquor in the surrounding district."

In some cases the Tribunal reaches the conclusion that, whatever may be said of the application in the form in which it was made, no injury will be done to the objectors by allowing the application subject to conditions. Thus in *Re Davis' Application* (*q*) the question was whether shops should be built on a corner site between a main road and a smaller road. The Tribunal concluded that no injury would be caused to the objectors by the applicants' proposals, so long as the shops faced the main road, and made the order as asked, subject to a proviso to that effect. Similarly,

(*n*) LP/26/1954.
(*o*) LP/139/1955.
(*p*) LP/24/1950.
(*q*) LP/89/1954.

in *Re Berridge's Application* (*r*) it was held that the objectors would not be injured by the building and maintenance of a Christian Science Church, provided that certain conditions were imposed, and the conditions were included in the order accordingly.

The Benefit of the Restriction

If the objectors prove that the execution of the applicant's proposals would injure them, it is open to him to reply by showing that the objectors are not "persons entitled to the benefit of the restriction." Thus, in *Re Herbert Ferryman, Ltd.'s Application* (*s*) it was held, *inter alia*, that, even if it were shown that the applicants' proposals would injure the objectors, there would be no injury to persons entitled to the benefit of the restriction, the objectors not being such persons. In this case the Tribunal examined the history of the restrictions fully and came to the conclusion that none of the objectors had a good title.

On the other hand, in *Re Sloggett's (Properties) Ltd.'s Application* (*t*) the Tribunal was asked to hold that none of the objectors was entitled to the benefit of the restriction, and that therefore there could be no injury to persons so entitled. The Tribunal intimated in this case that it cannot act under paragraph (c) unless the applicant proves who are the persons entitled to the benefit of the restriction and that they would not be injured, and that it is insufficient for him to establish merely the negative proposition that he cannot show who (if anyone) is entitled to the benefit of the restriction. The burden, it was held, was on the applicant to prove in such cases that no one is entitled to the benefit of the restriction. The Tribunal reached a similar conclusion in *Re Hedges' Application* (*u*) where it was proved by the applicant that the person most adversely affected by his proposals was not entitled to the benefit of the restriction. The application nevertheless failed, because the applicant failed to discharge the burden which lay on him to prove that none of the persons who would be adversely affected were entitled to the benefit of the restriction.

In *Re Taylor Walker & Co., Ltd.'s Application* (*x*) it was held, by a Tribunal consisting of two members, that since no evidence was called to enable the Tribunal to decide whether the objectors were entitled to the benefit of the covenants, it must be assumed that the covenants were valid. And similarly in *Re Skeeles'*

(*r*) LP/34/1953.
(*s*) LP/18/1951.
(*t*) LP/10/1952.
(*u*) LP/136/1955.
(*x*) LP/4/1952.

Application (*a*), it was held that the validity of the covenant was to be assumed despite submissions made by the applicant's solicitors that the contrary was correct.

These five last-mentioned cases are to be preferred to two early decisions (*b*) where it was expressly held that it is not the function of the Tribunal to decide the validity of restrictions nor who is entitled to enforce then. Naturally, the Tribunal approaches with some diffidence a task which might seem to be more appropriate for the court, especially having regard to the provisions of section 84 (2). Moreover, in many cases, it is perfectly possible to decide whether the jurisdiction under section 84 (1) arises without deciding any questions as to the enforceability of the restriction. But where it is necessary that a question on enforceability or title, or indeed any other point of law, shall be decided for the proper determination of the case, the Lands Tribunal can, and indeed must, determine that question. It does so on evidence and argument in the usual way. The duty and power are now well recognised in the practice of the Tribunal: indeed, in *Re Jennifer's Hotel, Ltd.'s Application* (*c*) the question whether the objectors had a title was set down and decided as a preliminary point of law. The burden of showing that the objectors have no title is now clearly laid upon the applicant by the decisions cited above. But as a practical matter it is not likely often to be necessary to prove also that persons who are not objectors have no title.

Decisions Under Paragraph (c)

Generally speaking, then, paragraph (c) of section 84 (1) is a good deal more important than paragraph (a). It is paragraph (c) that is available for the summary dismissal of frivolous and vexatious objections, as occurred in *Re S. & K. Darvill, Ltd.'s Application* (*d*) where the Tribunal held that the applicants' project was superior to the project envisaged by the restriction. The application was granted under paragraph (c): and, unusually, the objectors were ordered to pay the applicants' costs, to be taxed on this occasion on the High Court scale.

Paragraph (c) has been held to apply, alone or with other paragraphs, in the greater part of those cases reported in Volume 7 of the *Planning and Compensation Reports* in which the application

(*a*) LP/1/1954.
(*b*) *Re Coulsdon and Purley U.D.C.'s Application*, LP/21/1950 and *Re Hobbs & Marshall's Application*, LP/20/1950.
(*c*) LP/45/1952.
(*d*) LP/21/1955.

succeeded. It will be convenient to specify such cases here, and to mention briefly the kind of work or activity which in each case the applicant was authorised to execute or carry on:

Applicant	*Activity*
Charrington & Co., Ltd. (LP/24/1950) ...	Off-licence
Hackney Borough Council (LP/31/1950) ...	Open air theatre in square garden
Kohout (LP/15/1951)	Guest house
Herbert Ferryman, Ltd. (LP/18/1951) ...	Factory
Chaumel (LP/12/1952)	Nunnery and girl's school
Kennedy (LP/33/1953)	Garage yard
Snowdon (LP/17/1954)	Conversion of house into flats
Harte-Lovelace (LP/26/1954)	Offices
Notley (LP/44/1954)	Shops
Hall & Co., Ltd. (LP/46/1954)	Extraction of sand
C. K. Davis (LP/89/1954)	Shops
National Children's Adoption Association (LP/1/1955)	Infants' home
S. & K. Darvill, Ltd. (LP/21/1955)	Different lay-out of houses
Ling (LP/26/1955)	Greater density
Southampton Corporation (LP/79/1955) ...	Waterworks sub-depot
Jamelson Property Co., Ltd. (LP/18/1955) ...	Shops
Wreford (LP/139/1955)	Greater density
St. Albans' Investments, Ltd. (LP/1/1956) ...	Flats

Paragraph (a): Second Limb

After paragraph (c), the provision of Law of Property Act, s. 84 (1) which most often grounds the intervention of the Lands Tribunal is the second limb of paragraph (a). Under this provision the Tribunal may discharge or modify a restriction on being satisfied that "the continued existence thereof would impede the reasonable user of the land for public or private purposes without securing practical benefits to other persons, or . . . would unless modified so impede such user."

"Impedes the Reasonable User"

Unlike paragraph (c), this provision is not directed primarily to the effects of executing the applicants' projects, but to the effects of the covenant itself if it continues to exist unmodified. It is not sufficient for the applicant to show that his proposals are reasonable and that the restrictions impede them. He must show "that the permitted user is no longer reasonable and that another user which would be reasonable is impeded": see *Re St. Mary Magdalene P.C.C.'s Application* (*e*). In fact, the applicant must

(*e*) LP/11/1956.

show that the restrictions sterilise the land. The test appears to have been stated accurately by the Tribunal as long ago as 1951 in *Re William Cooper & Sons, Ltd.'s Application* (*f*) where the Tribunal put to itself the question "Can it be said that the use to which (the applicant's land) is restricted by the covenant is such that there is no reasonable prospect of it being applied to such use?" Similarly, in *Re Sloggett's (Properties) Ltd.'s Application* (*g*) the Tribunal declined to say that the development envisaged by the restrictions could not be carried out, although its execution had become more expensive, and consequently held that the restrictions did not "impede the reasonable user of the land." And in *Re Wakefield City Corporation's Application* (*h*), a Tribunal consisting of two members said: "This does not mean that if one particular use which the Council wish to adopt is impeded the onus is discharged. (The Council) must satisfy the Tribunal that that use is reasonable and that no other reasonable use is available."

Further, weight must be given to the conduct of the person entitled to license deviations from the restriction. Thus, in *Driscoll* v. *Church Commissioners for England* (*hh*), Denning L.J. said: "The continued existence of the restriction does not impede the reasonable user of the land when we know that . . . the Church Commissioners have given their consent freely and reasonably to all reasonable changes of user . . . subject to conditions . . . to preserve the residential character of the area."

Planning Permission

Again, the fact that planning permission has been given for the applicant's projects does not of itself carry him to success. Nor does the fact that he would profit from the projects. Thus in *Re M. Howard (Mitcham) Ltd.'s Application* (*i*) the Tribunal said: "The applicants certainly proved that the restrictions impede the development which is proposed, and it was contended that, since that development had been approved by the planning authority, it was reasonable development. It is not, however, in my view sufficient to show that one particular form of development is impeded. If development in accordance with the covenants is a reasonable development, then it seems to me impossible to find in accordance with the statute that reasonable development

(*f*) LP/15/1950.
(*g*) LP/10/1952.
(*h*) LP/15/1952.
(*hh*) [1956] 3 W.L.R. 996.
(*i*) LP/73/1955.

is impeded, particularly if that development shows practical benefits to other persons entitled to the benefit of the covenants which would not be secured if a different form of development took place." The Tribunal stated that the applicants had not considered developing the land in accordance with the covenants because their proposed development would be more profitable, and added "But in my view reasonableness is not to be gauged by financial profit."

In *Re Hedges' Application* (*ii*) planning permission for the applicant's proposals had been granted before the application was lodged. After various neighbours had objected to the application, the planning authority changed its mind. But it did not revoke the planning permission: it passed a resolution regretting its own previous decision and deputed an Alderman to explain its views in evidence before the Tribunal. This witness "thought that the failure of the Council to revoke the permission granted was not unconnected with a possible liability to pay compensation." The Tribunal observed that "the planning history of this case only shows how little assistance can be obtained by this Tribunal from a decision of a planning authority, when considering cases under section 84."

"Practical Benefits to Other Persons"

If the applicant is to succeed under the second limb of paragraph (a), he must show not only that reasonable user is impeded, but also that no practical benefits are thereby secured to other persons. Who the "other persons" must be is discussed below. But it is clear that the easiest way for the applicant to sustain this point is to show that his proposals will not injure the objectors. Conversely, if the objectors can show that such proposals will injure them, they are likely to succeed. The consequence is that the cases under this limb of paragraph (a) are closely linked with the cases under paragraph (c), and especially with those instances of the latter class of case in which the applicant has failed. The two groups of cases have not hitherto exactly coincided because the persons whose injury is referred to in paragraph (c) are those who are entitled to the benefit of the restriction, while the practical benefits to which paragraph (a) refers are benefits to "other persons" which has sometimes been given a wide construction. Nevertheless,

(*ii*) LP/136/1955.

there is much common ground between the cases on the two provisions.

Re Henderson

On the question whether the continued existence of the covenant secures practical benefits to other persons, the Lands Tribunal has throughout had before it the guidance of Farwell J. in *Re Henderson* (*k*). One question there was whether a restriction which secured that there should be an open space near an objector's property secured practical benefits to him. Farwell J. held that it did: for, he said (*l*), it secured an amenity which might well enhance to some extent the value of the objector's property. Although the learned judge said that in that case the benefit might be a pecuniary one, he was clearly not limiting benefits to those that can be expressed in money. The Lands Tribunal has carried the matter farther, and has held that, although the modification of the covenant might actually benefit the objector in terms of money, the covenant's existence may still secure him practical benefits of another kind. Thus in *Re Munday's Application* (*m*) the objectors lived in a row of houses at Ramsgate; the applicant sought to use another house in the row for the purposes of public entertainment. He argued that in this vicinity the presence of residents was an anachronism, " and that financially the owners of (the objectors') properties would benefit greatly from a general discharge of the restriction." Hence, he said, the restriction was of no practical benefit. The Tribunal rejected this argument, saying that it was untenable " where it can be inferred from the evidence that capital value is not the sole interest of the objectors, and that their reasonable personal tastes and predilections will be adversely affected if the covenants go." This is an important decision and one which shows how closely the Lands Tribunal follows the observation of Farwell J. in *Re Henderson* (*n*) that section 84 (1) is not designed " to enable a person to expropriate the private rights of another party for his own profit . . . if a case is to be made out (under this part of the section) there must be some proper evidence that the restriction is no longer necessary for any reasonable purpose of the person who is enjoying the benefit of it. . . ."

" Other Persons "

There remains the question who are the " other persons " referred to in the phrase " without securing practical benefits to

(*k*) [1940] Ch. 835.
(*l*) *Ibid.*, at p. 849.
(*m*) LP/59/1953.
(*n*) [1940] Ch. 835, at p. 846.

other persons." If the reference is to persons entitled to the benefit of the restrictions and to them alone, certain important tactical consequences may well follow. For most applicants with any prospects of success can safely be advised to frame their applications only under paragraph (c) and the second limb of paragraph (a); having done so, an applicant can then wait and see what objectors come forward in the interlocutory stages. If the only persons who lodge objections seem likely to have no title to the benefit of the restriction, the applicant can seek to set down the case on a preliminary point of law as in *Re Jennifer's Hotel, Ltd.'s Application* (o) and attempt to prove that no objector has any title. If he succeeds, he will have established in any event that no objector has any *locus standi* as such on the question of the applicability of paragraph (c): and if "other persons" means only persons entitled to the benefit of the restrictions, the applicant will also have shown that no objector has any *locus standi* as such on the question of the applicability of the second limb of paragraph (a). If, then, the applicant's case is framed under those two provisions only he can go on to invite the Tribunal to make an order, under Rule 18 (1) of the Lands Tribunal Rules, 1949, without a formal hearing. The Tribunal has a discretion and is in no way bound to grant such a request; but the applicant will be assisted at the hearing by having undermined the objectors' position.

The question is therefore who are the "other persons" referred to in paragraph (a). Grammatically the phrase appears simply to refer to persons other than the applicant: for the only person already referred to in section 84 (1) is the applicant, apart from "any person suffering loss in consequence of the order," to whom reference is made merely in a parenthesis. The grammatical construction therefore does not assist one way or the other, and the true construction has to be collected from section 84 as a whole. On the one side it may be said that there are repeated express references in the section to the persons entitled to the benefit of the restriction; and it must be conceded that the legislature could easily have made an express reference to them in the second limb of paragraph (a). But it is submitted that the decisive consideration is that the section is concerned with rights, while "other persons," other than those entitled to the benefit of the restriction, could have no relevant rights. In subsection (5) it is declared that any order made under the section is to be binding on "all

(o) LP/45/1952.

persons . . . then entitled or thereafter capable of becoming entitled to the benefit of (the) restriction. . . ." If "other persons" is to bear the wider of the two possible senses, it would require the Tribunal to consider the interests of persons who would have no relevant rights, and who would for that very reason not be bound by any order that was made. Such a requirement might make sense in a Town Planning Act, but hardly in a Law of Property Act.

Conflicting Decisions

In the meantime, however, the Lands Tribunal has spoken on this question with a somewhat uncertain voice. In *Re Sloggett's (Properties) Ltd.'s Application* (*p*) the Tribunal stated that "It is noteworthy that the words 'other persons' are not qualified in this context and it was admitted by (counsel for the applicants) that it was not essential that they should be persons entitled to the benefit of the covenants." When the Tribunal came to deal with this point a little further on, it intimated that there would be injury to "occupiers of surrounding properties." In view of the admission of counsel, there was in this case no actual decision on the relevant point; but at least it may be said that the Tribunal did not suggest that there was any doubt about the necessity for the admission.

Re Winship's Application

In *Re Winship's Application* (*q*) all the objectors having the benefit of the covenants agreed not to oppose the making of the order; but three other objectors appeared by counsel, who admitted on their behalf that they were not entitled to the benefit of the restrictions. Counsel submitted, however, that his clients were entitled to lodge an objection as being "other persons" within paragraph (a). The President of the Lands Tribunal stated that, though he had doubts on the point, he must reject their submission:

> "These restrictive covenants arise from contractual relations between person and person, and it was to relieve, in certain circumstances, such persons from their contractual relations that the section was enacted. I cannot believe that it was the intention of the legislature to allow a stranger to those contractual relations who has not, and never had, a right to enforce them, and who paid no consideration for them, to lodge an opposition to modification agreed to by all the

(*p*) LP/10/1952.
(*q*) LP/45/1954.

parties to the covenants. I am reinforced in this opinion by subsection (3) of section 84 and by Rule 16 of the Lands Tribunal Rules. Those enactments purport to make provision for notifying all the 'interested parties' before the Tribunal hears the application. In each case the notice is limited to persons appearing to be entitled to the benefit of the restriction. If it was intended that persons other than those entitled to the benefit of the restriction should have a say in the matter, it seems to me that the section and the Tribunal rules would have made some provision for notifying them."

Cases other than Re Winship's Application

A week after the decision in *Re Winship's Application* (*r*) the Tribunal gave its decision in *Re Fisher's Application* (*s*). The benefit of the covenants had been expressly annexed to the land of a certain vendor, and all the objectors owned land outside the confines of that vendor's estate. The Tribunal said, however, that "In considering the merits of the application the fact that they have not established their claim would not exclude them when assessing the practical benefits of the restrictions to 'other persons.'" Later, the Tribunal held in terms that the continuance of the restrictions in their existing form secured no practical benefits to anybody, so that the outcome would have been the same whoever were held to be "other persons" for the purpose of paragraph (a). The observation as to "other persons" was thus not necessary to the decision.

In *Re S. & K. Darvill's Application* (*t*) the Tribunal found expressly that the objectors were not entitled to the benefit of the restrictions, but added that is was desirable to deal with the case on its merits, which were entirely in the applicant's favour. Technically, therefore, this decision adds nothing to that in *Re Fisher's Application* (*s*); but the Tribunal's decision is so worded as to imply that if the applicant had not won on the merits it was at least open to him to take the point that the objectors had no *locus standi*.

In *Re St. Mary Magdalene P.C.C.'s Application* (*u*) the Tribunal in fact decided that the restrictions did not impede the reasonable user of the land, and it was therefore unnecessary for it to decide whether they did so without securing practical benefits to other persons. It went on, however, to state, admittedly *obiter*, that

(*r*) LP/45/1954.
(*s*) LP/41/1954.
(*t*) LP/21/1955.
(*u*) LP/11/1956.

the "other persons" need not be entitled to the benefit of the restriction, and that the purpose of the provision was to "make it clear that under this head the applicant must show that the covenant really serves no useful purpose and only impedes the reasonable use of the land."

In *Re St. Albans Investments Ltd.'s Application* (*a*) the solicitor who appeared for all the objectors offered no evidence of his clients' titles but submitted that "under section 84 it is competent for the Tribunal, even when the title to the benefit of the restrictions has not been established, to consider the impact of the applicant's proposals on the neighbourhood as a whole and to impose such conditions as are desirable in the interests of good estate management." This submission was accepted by the Tribunal who observed that "The terms of the section are not mandatory, and where no objector can prove his title, or even where there has been no objection at all, the Tribunal's discretion as to the imposition of restrictions is not limited in any way." The Tribunal therefore dealt with the case on its merits and discharged the restrictions. With respect, the passage quoted from the decision of the Tribunal is unexceptionable: clearly the Tribunal has a discretion. But it does not follow from that proposition that objectors with no title have any legal right to insist on being heard, nor that their interests can be directly considered. It may well be that in some difficult cases where there are no objectors with a strict right to be heard the Tribunal will invite one or more of them to address it and even to cross-examine the applicant's witnesses for the Tribunal's assistance on the general question of estate management, or otherwise; but that is a very different thing from accepting the right of objectors with no title to attend as objectors simply for the purpose of furthering some ends of their own.

Similarly in *Re Pioneer Properties Ltd.'s Application* (*b*) the applicants submitted that none of the objectors was entitled to the benefit of the restrictions and that therefore no one so entitled would be injured by the modification, as prayed, of a restriction which the Tribunal found to impede the reasonable user of the land. The Tribunal modified the covenant, as prayed, but engrafted on the modification certain conditions to ensure that the applicants' proposed development was in keeping with that of other premises near by. The Tribunal declined to adjudicate on the question of title, intimating that if the applicants believed that

(*a*) LP/1/1956.
(*b*) LP/143/1955.

they were right in law it was open to them to ignore the restriction altogether. The Tribunal also stated that even if it had been satisfied that none of the objectors had any title, it would still, in the exercise of its discretion, have granted the modification on the same conditions.

"Other Persons": Result of the Cases

In all the circumstances, it is submitted that the correct view on the point of law as to the meaning of "other persons" is that of the President of the Lands Tribunal, for the reasons given by him in *Re Winship's Application* (c) and for the additional reasons suggested above. Nevertheless, there is nothing to prevent the Tribunal, in considering how to exercise its discretion, inviting and allowing persons not entitled to the benefit of the restriction to address it in a proper case. But it does not follow that such cases will be very frequent. On the other hand, if the view here submitted prevails, there should be quite a number of straightforward cases in which the applicant will be able to smooth his own path by proving that more or less factious objectors have no title and inviting the Tribunal at an early stage to dismiss them from the proceedings.

Decisions Under Paragraph (a), Second Limb

The Tribunal has held the second limb of paragraph (a) to apply in a considerable number of cases; particulars of such of them as appear in Volume 7 of the *Planning and Compensation Reports* are as follows:—

Applicant	*Activity permitted*
Coulsdon and Purley U.D.C. (LP/21/1950) ...	Community Centre
Kohout (LP/15/1951)	Guest house
Chaumel (LP/12/1952)	Nunnery and girl's school
Sanderstead Parochial Church Council (LP/25/1953)	Church Hall
Kennedy (LP/33/1953)	Garage yard
Snowdon (LP/17/1954)	Flats
Harte-Lovelace (LP/26/1954)	Offices
Pioneer Properties Ltd. (LP/143/1955) ...	Five houses instead of one

Except for the latest of these cases, none is very recent. On the other hand, as has already been shown, the favourable decisions under paragraph (c) have become more frequent of late. It seems to have become recognised, in about the last two years, that it is necessarily easier to obtain a favourable decision under paragraph (c) than under the second limb of paragraph (a). For if

(c) LP/45/1954.

the applicant can show that his project will not injure the objectors, he succeeds under paragraph (c) and need go no further. If he cannot show that, he is likely to be in difficulties under the second limb of paragraph (a). For thereunder he must prove that the restriction impedes the reasonable user of the land and then go on to show that it would not injure "other persons." For the latter purpose he will substantially have to prove the same facts as would have brought him success under paragraph (c). The only result will have been to introduce an extra stage. Success in the extra stage does not alone entitle him to success in the application.

It seems likely, therefore, that a good deal less will be heard in future of the second limb of paragraph (a). Its popularity in the past may well have been due to a tendency to read section 84 (1) from beginning to end, and so to read paragraph (c) last. No doubt, there were some applications which succeeded under paragraph (a) which would equally have succeeded under paragraph (c) if it had been considered first. Experience shows that the provision of section 84 (1) that is most useful to an applicant is paragraph (c). It follows that once this fact was realised the advisers of applicants have concentrated their attention first on that paragraph. In doing so, they were undoubtedly wise.

Paragraph (a): First Limb

In some cases the Lands Tribunal has modified or discharged restrictions in exercise of the powers conferred by the first limb of paragraph (a). It is upon this limb that applicants have tended first to concentrate their attention, partly owing to the fact that it comes first in the subsection and partly owing to the widespread superstition that the Lands Tribunal's only jurisdiction under section 84 is to do with changes in the character of the neighbourhood. It is likely that in most of the cases in which the Tribunal has been invited to act, and has acted, under the first limb of paragraph (a), it could equally well have acted under paragraph (c). And since the first limb of paragraph (a) requires the Tribunal to consider at least two problems, each of which may well be very difficult, it seems likely that in future applicants will tend to follow the easier path marked out by paragraph (c), if they reasonably can do so. Of course, applications which fail will do so only after consideration of the whole subsection, and in cases of doubt all its branches must still be argued. But paragraph (c) is the provision most useful to an applicant; it should be discussed first at the hearing, and if it is necessary to go beyond it the application will in most cases already be on the way to failure.

The two problems of particular difficulty in relation to the first limb of paragraph (a) are to define a "neighbourhood" and to determine at what stage restrictions ought to be deemed obsolete. On each there is now some accumulated guidance; but they can never be easy.

"Neighbourhood"

In *Re Davis' Application* (*d*) the applicant prayed in aid changes in the character of an area half-a-mile square surrounding the premises at Hove in respect of which he applied for relief. The Tribunal refused to accept that so wide an area was the neighbourhood in relation to the applicant's property. In the course of the decision there appears the following important observation:

> "Provided a neighbourhood is sufficiently clearly defined as to attract to itself and maintain a reputation for quality or amenity, the size of the neighbourhood and, within reasonable limits, the progress and nature of the development outside its boundaries is of little consequence."

The test is thus essentially an estate agent's test: what does the purchaser of a house in that road, or that part of that road, expect to get? The matter is further elaborated by the Tribunal as follows:

> "Character (for the purposes of section 84 (1)) derives from the style, arrangement and appearance of the houses on the estate and from the social customs of the inhabitants."

The neighbourhood need not be large: it may be a mere enclave. Nor need it, so far as this definition goes, be co-terminous with the area subject to the very restriction that is to be modified, or other restrictions forming part of a series with that restriction. Thus in *Re Knott's Application* (*e*) the Tribunal found expressly that Berkeley Square was a neighbourhood for the present purpose, although the covenants imposed on the houses in the Square appear to have been part of a series of covenants extending over a larger area. Conversely, in *Re Escritt's Application* (*f*) the covenants were imposed in pursuance of a scheme of development affecting a certain area; but the Tribunal was prepared to consider whether the establishment of a housing estate somewhat outside the area affected by the scheme had so changed the character of the neighbourhood as to justify action under sub-paragraph (a).

(*d*) 1335 (1950).
(*e*) LP/21/1953.
(*f*) LP/73/1953.

The Tribunal stated that "these are circumstances in which such an event (*sc.* as the establishment of a housing estate) could spread a blight over a wide area; but inspection . . . convinces me that the character of the neighbourhood has been affected so slightly, if at all, that the covenants on the common vendor's estate have not been stultified." The test is a pragmatic one: if events in the vicinity have stultified the covenant, those events may be considered even if they are on land never affected by the restriction in question or any related restriction.

The meaning of "neighbourhood" was directly considered in *Re Ling's Application* (*g*), where a particular area contained within four roads was held to be "sufficiently distinctive to constitute a neighbourhood of its own." And in *Re F. & H. Joyce Ltd.'s Application* (*h*) the Tribunal was invited to say that the neighbourhood must be restricted to the property belonging at the date of the covenants to the trustees who were the original covenantees "or only a limited area round it" (whatever that meant). The Tribunal, having inspected the area, held that "a much wider area" must be considered. Again, in *Re George Reed (Builders) Ltd.'s Application* (*i*) the Tribunal acted, among other grounds, upon the covenants being obsolete. The obsoleteness consisted in the fact that land in the immediate vicinity of the property was being developed as a housing estate by the local authority. This development was on land which had been included in the estate for the benefit of which the restrictions had been imposed, and there is nothing in the report to suggest that it had ever been subject to any restrictions at all.

This pragmatic approach must clearly be right: otherwise it would normally be easier to discharge a covenant under subparagraph (a) if the original covenantee had very little other land in the vicinity than if he had a large amount. This part of the section seems to be directed not to matters of title and the right to enforce the restriction but to the question whether the restrictions affecting a given property, situated where it is situated, have been stultified by events on the surrounding premises.

Restrictions Recently Modified

It will naturally be difficult to obtain a further modification of a restriction which has recently been modified by the Tribunal itself or by the Authority. And in *Re Hedges' Application* (*ii*) the

(*g*) LP/26/1955.
(*h*) LP/124/1955.
(*i*) LP/33/1955.
(*ii*) LP/136/1955.

Tribunal held that in such a case it is only entitled to consider such changes in the neighbourhood as have occurred since the previous order.

"Ought to be Deemed Obsolete"

In a certain number of cases the Tribunal, having decided that the character of the neighbourhood has changed, has gone on to consider the further question whether those changes are such that the covenant ought to be deemed obsolete. In *Re Truman, Hanbury, Buxton & Co., Ltd.'s Application* (*k*) this question arose directly. An estate at Southend was laid out at the end of the nineteenth century for residential development, and covenants were imposed to that end upon the lots into which it was divided. One provision forbade the sale of alcoholic liquor. In fact no development took place until about 1925, and when it did occur shops were erected on some of the lots which fronted the London Road. The applicants wished to erect a public-house on two of the lots fronting that road and sought the discharge of the restrictions upon those lots which expressly forbade them to be used for the purpose of selling alcoholic liquor. Much of the estate was still occupied for residential purposes, and in particular certain objectors owned houses in Gordon Road, abutting on the applicant's plots. Counsel for the applicants admitted before the Tribunal that those objectors were entitled to the benefit of the covenants, and the Tribunal found that the discharge of the restriction forbidding the sale of alcohol would injure those objectors seriously. The applicants contended, however, that they were entitled to succeed under the first limb of paragraph (a). The Tribunal rejected this submission on the ground that though there had undoubtedly been a change in the character of the London Road frontage such change did not justify the Tribunal in saying that the covenant was obsolete. The Tribunal was referred to *Chatsworth Estates Company* v. *Fewell* (*l*) and *Re Henderson's Conveyance* (*m*), and intimated that the test of obsoleteness was whether the restriction had become absolutely valueless. The applicants appealed, and submitted in the Court of Appeal that the Tribunal had applied the wrong test. Romer L.J., giving the principal judgment, stated that the case really turned on the meaning of the word "obsolete" in paragraph (a). He observed that the meaning of this word may well vary according to the subject-matter to which it is applied. Thus, an obsolete motor-car may well have some value. But where the context is that

(*k*) [1956] 1 Q.B. 261.
(*l*) [1931] 1 Ch. 224.
(*m*) [1940] Ch. 835.

of a restriction imposed for the purpose of preserving the residential character of an estate, the time will come, after gradual changes, when it can be said that the restriction is obsolete in the sense that the residential area has become substantially a commercial area: the real question is whether the original object of the covenant can or cannot still be achieved. If it cannot, the covenant is obsolete. The Lord Justice said that, in a formal sense, the Tribunal might be said to have applied rather too strict a test in saying that the question was whether the covenant was absolutely valueless; but that in the present case the result would have been the same if the Tribunal had applied the correct test stated above. He further said that the finding that the discharge of the restriction would seriously injure the Gordon Road frontages showed that it still afforded a real protection to them, and indeed such a finding made it "almost impossible" to say that the restrictions had become obsolete.

In *Driscoll* v. *Church Commissioners for England* (*mm*) the Court of Appeal had to consider a residential estate which had been developed by means of long leases rather less than a century ago. The leases contained the usual covenant prohibiting user otherwise than for single private dwelling-houses. The assignee of the lease of one house wished to use it for the purposes of a hostel for overseas students, but was unwilling to accept a license from the lessors, which was offered to him on fairly stringent conditions. A good deal of change had in fact occurred in the neighbourhood, under licenses from the lessors, due to the fact that the houses were too large for convenience in modern conditions and had in many instances been converted into flats. The application failed both in the Tribunal and in the Court of Appeal. Denning L.J. expressed the view that the covenant enabled the lessors to keep the area as a residential area and that so long as they used it reasonably it could not be obsolete. He added that if the lessor used such a covenant unreasonably it would be obsolete. Hodson L.J. expressed the view that the test was objective and stated that the views of Romer L.J. in *Re Truman, Hanbury, Buxton & Co., Ltd.'s Application* afforded him assistance. Morris L.J. also derived assistance therefrom and added that in his opinion the covenant was still capable of fulfilment, "even though there may not be many people who could afford to keep these rather large houses." He said also that the control given to the lessors did still afford a protection to the neighbours, by enabling them to keep the area as a residential one.

(*mm*) [1956] 3 W.L.R. 996.

The test propounded by the Court of Appeal in *Re Truman, Hanbury, Buxton & Co., Ltd.'s Application* for the purposes of the first limb of paragraph (a) of section 84 (1) is in terms substantially identical with those which were used by Lindley L.J. in *Knight* v. *Simmonds* (*n*) in discussing the grounds upon which equity would refuse to enforce a restriction that has become useless. It was there stated that equitable relief will be refused if, looking at the object to attain which the covenant was entered into, the court finds that that object cannot be attained. It is respectfully submitted that the proposition of Lindley L.J. correctly states the test applicable either to the refusal of equitable relief or for the purposes of the first limb of paragraph (a). A more severe test was said to be applicable by Farwell J. in *Chatsworth Estates Co.* v. *Fewell* (*o*) where refusal of equitable relief was held to depend on the action to enforce the restrictions being "unmeritorious, not bona fide at all, and merely brought for some ulterior purposes." This is, in effect, the test stated by Romer L.J. to be "rather too strict," and it cannot stand with the views expressed by the Court of Appeal in *Knight* v. *Simmonds* (*p*). This view derives support also from the judgment of Roxburgh J. in *Hunt* v. *Molnar*, reported as a note to *Re Howard (Mitcham), Ltd.'s Application* (*q*). The restrictions need not be held obsolete over the whole estate; indeed, the Tribunal and the Court of Appeal apparently agreed that the London Road frontage had become, in effect, a neighbourhood of its own and one the character of which had changed. Presumably, it could also be held that a particular restriction has become obsolete without the fate of the whole system of restrictions coming in issue.

It follows from *Re Truman, Hanbury, Buxton & Co., Ltd.'s Application* (*r*) that there may well be a good deal of overlapping between paragraph (a) and paragraph (c). For it was the finding that the discharge of the restriction would injure the Gordon Road frontagers, who were admittedly entitled to the benefit of the covenant, that was said by Romer L.J. to make it almost impossible to find that the restriction was obsolete. This observation of his Lordship supports the proposition submitted above that applicants should normally rely on paragraph (c), and that an application which cannot be sustained under that paragraph is already on the way to failure.

(*n*) [1896] 2 Ch. 294, at p. 297.
(*o*) [1931] 1 Ch. 224.
(*p*) [1896] 2 Ch. 294.
(*q*) LP/73/1955.
(*r*) [1956] 1 Q.B. 261.

Paragraph (b)

Besides paragraph (a), the applicants in *Re Truman, Hanbury, Buxton & Co., Ltd.'s Application* sought, if somewhat faintly, to rely on paragraph (b). This paragraph enables the Tribunal to discharge or modify a restriction if "the persons of full age and capacity for the time being entitled to the benefit of the restriction . . . have agreed, either expressly or by implication, . . . to the same being discharged or modified." This submission failed for want of any evidence to support it. There seems, in fact, to have been only a single case in which paragraph (b) has been held applicable. The case was *Re Hackney Borough Council's Application* (*s*) where the local authority sought to be allowed to use a square garden for purposes of an open-air theatre. The owners of property surrounding the square had acquiesced, as long ago as 1920, in a complete change in the régime governing the square, which was then taken over by the local authority. Their acts or omissions on that occasion were held to amount to a consent fatal to those of the objectors who were their successors in title thirty years later. But, since the application also succeeded both under paragraph (a) and paragraph (c), the finding under paragraph (b) was not essential to the result, and the fact that that decision stands alone is sufficient to show that paragraph (b) is not likely to be of much assistance in practice. Nor, indeed, is that surprising. For if the consents are express there can seldom be any need for an application to be made to the Tribunal; and if they are implicit, they will almost necessarily have led to a change in character sufficient to enable the applicant to succeed under the first limb of paragraph (a).

Decisions Under Paragraph (a): First Limb

The following are the cases reported in the Volume 7 of the *Planning and Compensation Reports* where relief has been granted under the first limb of paragraph (a), alone or in conjunction with other provisions:

Applicant	*Activity permitted*
Hickman (LP/26/1950)	Bakery
Hackney Borough Council (LP/31/1950) ...	Open-air theatre
Doloughan (LP/6/1951)	Conversion into flats
Holmans (LP/8/1951)	Private hotel
Ferryman (LP/18/1951)	Factory

(*s*) LP/31/1950.

Applicant	*Activity permitted*
Chaumel (LP/12/1952)	Nunnery and school
Knott (LP/21/1953)	Offices
Fisher (LP/41/1954)	Greater density of houses
Notley (LP/44/1954)	Shops
London Investment and Mortgage Company (LP/8/1955)	Offices
Ling (LP/26/1955)	Greater density of houses
Handford (LP/37/1955)	Greater density of houses
Reed (LP/33/1955)	Bungalows

[*To be continued*]

NOTES OF RECENT CASES

1. *REAL PROPERTY*

Rust v. *Goodale* [1956] 3 W.L.R. 749; [1956] 3 All E.R. 373

Agreement for lease—mortgages—sub-lease—grant of head-lease —sale by mortgagee—priorities.

See the article, *ante*, p. 444.

2. *WILLS*

By A. Kiralfy, Barrister-at-Law

Re Morton [1956] 3 W.L.R. 663; [1956] 3 All E.R. 259

Partial intestacy—bequest of life interest to child with remainder over for life to grandchild, with remainders over—effect of hotchpot. —Section 47 (1) (iii) of the Administration of Estates Act, 1925, requires any money or property paid to a child or settled by an intestate for the benefit of a child to be brought into hotchpot. It has been held in another context, in *Re Reeve* [1935] Ch. 110, that a transfer of money to the trustees of a son's marriage settlement is equivalent to a payment of money to the son, on the authority of a line of old cases, *e.g.*, an appointment to a son for life with remainder to his children is a good exercise of a special power to appoint to a son. Where an intestate is survived by a child and that child's child it is clear that only the child has a claim on intestacy (s. 47 (1) (i)). On the other hand a partial intestate may well have left separate bequests to both. This situation may have induced the legislature to adopt what appears, at first sight, to be a curious wording in section 49. In cases of partial intestacy the duty to bring property into hotchpot " shall apply to any beneficial interests acquired by any issue of the deceased under the will of the deceased. . . ." The reference to " issue " is in significant contrast with the word " child " in section 47. This was the reasoning of Harman J. in *Re Young* [1951] Ch. 185. In that case, which is not fully explained in all the books, a lapsed share passed as on intestacy. The testator had left another share to a son, Charles, for life, with remainder over to Charles' children. In the event Charles died a few days after the testator. His personal representatives argued that his estate was only liable for the value of the income of the share during those few days. The learned judge held that Charles' estate was liable for the full capital value, as [Charles' children were not claimants on

intestacy and] this was the only way to prevent the share escaping from the liability to hotchpot. He referred to the rule about indirect benefits, pointed to the reference to settlements in section 47, and the differences in wording between sections 47 and 49. Section 49 defined the interests to be brought into account, *viz.*, all interests taken by "issue," and section 47 refers to the "child" as accountable. The result is rather hard, especially if the child has left his estate to some third person. An express hotchpot clause to the same effect, however, is sometimes used, as appears from *Re Gordon* [1942] Ch. 131 where there was a duty to account, under an express hotchpot provision, imposed on "any child, who or whose issue" should take, to the extent of interests taken by "him or his issue." In *Re Young* the issue took the whole capital between them. In the instant case of *Re Morton* a son and a grandson had successive life interests, with remainders over which failed for perpetuity. Danckwerts J. held that the son was liable to account for both himself and his issue, but that liability was limited to the sum of the actuarial values of the successive life interests. There was no reason to make him liable for anyone else. The learned judge pointed to the references in section 49 to "beneficial interests" and rejected the argument that the accountable party must bring the "property" into account in the sense of the fund or asset out of which the life interests had been carved. "Property" is certainly more aptly used to refer to proprietary interests. The colloquial description of houses or goods as "property" is a misuse of the legal term. It is hard enough to make a man liable for what his sons take, which the statute makes him do.

(Theobald 681)

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3. *PLANNING CASES*

By T. A. Blanco White, Barrister-at-Law

Cooper v. *Bailey* (1956) 6 P. & C.R. 261

Control of advertisements—"business premises."—This was a Divisional Court decision on a stated case raising a similar point to that raised in *Dominant Sites, Ltd.* v. *Berkshire C.C.*, noted *ante*, p. 331. The defendant was charged with displaying without planning consent eight advertisements relating to the brands of petrol and oil sold at his filling station. The station included a "pull-in" by the side of the road; and along the side of the pull-in away from the road there ran (except in the centre, where the buildings proper were) a kerb, with a flower-bed behind it and a wall behind the flower-bed. Three advertisements were in the flower-bed: as to these the justices had convicted and there was no appeal. This decision (which the Divisional Court indicated was right) corresponds to that in the *Dominant Sites* case. A fourth advertisement was attached to the kerb; three more stood on a piece of concrete between wall

and kerb at the end of one flower-bed; and the eighth stood against the wall near the centre where the buildings proper were. As to these, the justices refused to convict and the Divisional Court upheld them: although such advertisements are lawful without express consent only as being displayed "on business premises," and although "business premises" must be a "building," nevertheless "building" includes "any part of" "any structure or erection"; and the five signs concerned here were all displayed "on" the wall, kerb, and piece of concrete, which were all part of the structure of the filling station—not being parts intended merely for the display of advertisements.

Bridger v. *Shoreham-by-Sea U.D.C.* (1956) 6 P. & C.R. 291

Agreement restricting development—arbitration.—Section 34 of the Town and Country Planning Act, 1932, provided for the making of agreements between the owner of land and the local authority, restricting development of the land. The 1947 Act, not unreasonably, provided that any party to such an agreement claiming that "the agreement ought to be modified or rescinded" as a result of the 1947 Act, might "refer to arbitration the question whether the agreement should be so modified or rescinded." In the present case, the agreement granted permission to develop certain land subject to restrictions, and also required the landowner to give certain other land to the local authority (subject to certain obligations). The other land was duly conveyed to the authority, but the outbreak of war prevented the development allowed by the agreement with the result that the permission to develop lapsed when the 1947 Act came into force. In due course the landowner applied under the 1947 Act for permission to develop some of the land concerned and was refused, whereupon he claimed arbitration. The local authority objected, on the ground (in effect) that nothing could come of the arbitration: the arbitrator could make an award affecting the restrictions on the development contemplated by the agreement, but since that development was not going to take place anyway such an award would be pointless. The Divisional Court, on appeal from the Judge in Chambers, held that this was no bar to the claim for arbitration —a decision in line with the authorities on arbitrations generally, and clearly correct. What is not so clear, is what sort of "modification or rescission" of the agreement could be sufficiently beneficial to the landowner to justify the cost of the arbitration.

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4. *LANDLORD AND TENANT CASES*

By Donald Keating, B.A., Barrister-at-Law

Gold v. *Brighton Corporation* [1956] 1 W.L.R. 1291; [1956] 3 All E.R. 442, C.A.

Landlord and Tenant Act, 1954—*determination by court of terms of new tenancy—extent of court's discretion.*—Section 35 of the Landlord and Tenant Act, 1954, gives the court a wide discretion in determining the terms of the new tenancy in default of agreement by the parties. The court must "have regard to the terms of the current tenancy and to all relevant circumstances." The Court of Appeal discussed the nature of this discretion and gave an example of when it would interfere with its exercise.

The tenant occupied premises under an agreement whereby she could use them for any kind of shop business which she chose to carry on there. In fact, she dealt in new and secondhand furs and clothes, and said in evidence that secondhand clothing was the main part of her business. The landlords agreed to the grant of a new tenancy of fourteen years but required the insertion of a term debarring the tenant from using the premises for the sale of secondhand goods except with the landlord's prior consent. The county court judge substantially acceded to the landlord's view by granting a new lease for the sale on the premises of children's wear and ladies' wear and prohibiting the sale of secondhand goods, except furs, save with the consent of the landlord. The only evidence in support of the landlord's contentions was a statement by the valuer, "that he would expect a prudent landlord to restrict the user of those premises so as not to lower the tone of the district."

The Court of Appeal struck out the restriction as to secondhand goods. They held that the terms of the new tenancy should be such as to enable the tenant to carry on her business as it was. There might be circumstances justifying a landlord who desired to impose a restriction on past user, but he must adduce cogent evidence in support. There was not sufficient evidence in this case.

It will be noted that it was not suggested that there was *no* evidence. Apparently the Court of Appeal in this type of appeal will weigh the evidence put before the county court judge.

London County Council v. *Farren* [1956] 1 W.L.R. 1297; [1956] 3 All E.R. 401, C.A.

Landlord and Tenant Act, 1954—*notice to quit by county council —authority of officer not proved by evidence or by statement or notice —London Government Act,* 1954.—The London County Council sought possession of business premises before a metropolitan magistrate under the Small Tenements Recovery Act, 1838. Their application failed on the sole ground that the notice to quit on which they relied was signed by one T. only and not by T. plus another officer as the terms of the tenancy agreement required. In fact the notice was expressed

to be given under the Landlord and Tenant Act, 1954 and complied with the statutory form, but no one apparently referred to the Act. Before the Divisional Court and again before the Court of Appeal the Act was relied on. It was said on behalf of the appellants, the L.C.C., that the notice was in accordance with the Act and need not therefore comply with the agreement as regards the person to sign the notice. This argument was accepted but, the London County Council failed on a point of local government law. They were asked what evidence there was that T. was authorised to sign the notice. No evidence had been given before the magistrate so it was necessary to rely on the notice itself. It was said that the word "agent" appearing on the document was sufficient, but the argument was rejected. The London Government Act, 1939, s. 184, was referred to and applied. Shortly the effect of the section is this; either the authority of the clerk or any officer to sign can be proved by evidence (but in this case there was none) or alternatively a document purporting to be signed by the clerk or any officer "stated therein to be duly authorised by the authority to sign such a document or the particular document, as the case may be, shall be deemed, until the contrary is proved, to have been duly given, made or issued by the authority of the local authority." There was nothing in or upon the notice stating that T. was duly authorised to sign it. Therefore the notice did not prove itself and the London County Council had failed to prove that it was a good notice. An application to remit the case to the magistrate for evidence of authority was refused.

Milletts (Victoria), Ltd. v. *Northley House, Ltd.*
[1956] J.P.L. 743

Landlord and Tenant Act, 1954.—*Lease containing break clause—two notices served—one under break clause not in statutory form—the other a statutory notice served for date before lease would expire by effluxion—no reference to break clause—validity of notice.* —A lease expired on March 25, 1956. Under the lease the landlords could break the lease on three months' notice. On August 25, 1955, they served two notices on the tenants. One was a common law notice under the break clause, requiring possession in three months, *i.e.*, by November 25, 1955. The other was a notice in the exact statutory form given under section 25 for March 1, 1956. The tenants claimed declarations that both notices were void, the first because it did not comply with the Act, and the second because it contained no reference to the break clause and purported to terminate the tenancy on an earlier date than that on which the lease would have come to an end by effluxion of time. The landlords conceded that the first notice did not prevent the tenancy from continuing under the Act and relied on the statutory notice.

The declarations were refused and it was held; (1) apart from the Act the lease could have been brought to an end by notice to quit given by the landlords in accordance with the break clause. The case was therefore governed by section 25 (3) (a) and not by section 25 (4). (2) The landlords could apart from the Act have

brought the tenancy to an end by notice to quit given for November 25, 1955. The statutory notice was given for a date not earlier than this date and was therefore valid. (3) Whether or not the landlords could have varied the prescribed form so as to refer specifically to the break clause they could not be blamed for adhering scrupulously to the prescribed form and the notice was not on that account invalid.

This case is discussed in the Conveyancer's Notebook (*supra*) and also in an article by Mr. V. G. Wellings [1956] J.P.L. 714, 724.

Barclays Bank, Ltd. v. *Stasek and Another*
[1956] 3 W.L.R. 760; [1956] 3 All E.R. 439

Mortgage subject to existing tenancy—new tenancy granted—new tenancy not binding on mortgagee—whether old tenancy surrendered as between tenant and mortgagee—position of original tenancy.—The owner of a house let S. two rooms. Subsequently the owner mortgaged the house, subject to the letting, by means of a registered charge which made the exercise of his statutory powers of leasing subject to the consent of the mortgagee. Without the consent of the mortgagee the owner granted two successive weekly tenancies to S. Each tenancy consisted of different rooms, but included one of the rooms originally let before the house was mortgaged. In due course the mortgagee obtained an order for possession against the owner and further sought possession against S. At first sight it appeared that S. would have no defence in the absence of the mortgagee's consent. However Danckwerts J. applied an interesting defence. He held that the original pre-mortgage letting had never been effectively surrendered by operation of law because the fresh lettings, being without the mortgagee's consent were ineffective, and a new ineffective letting does not bring about a surrender of a previous letting. Consequently S. was entitled to resume occupation of his pre-mortgage letting. As Danckwerts J. said, if and when that letting was determined by notice awkward and difficult questions would no doubt arise under the Rent Acts.

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5. *REVENUE CASES*

By David R. Stanford, m.a., ll.b., Barrister-at-Law

(*Note*:—Where a case is not reported in any of the general series of law reports it is cited from *Taxation Reports* (T.R.).)

C. I. R. v. *National Book League*
[1956] T.R. 321 (Ch.D.)

Income Tax—Charity—Payments under deed of covenant

Statutory provisions: Income Tax Act, 1952, ss. 123 and 447.

Point: Nowadays when income tax removes nearly one half of unearned income from the recipient, charitable bodies seek to increase

their revenue by acquiring an " income " from their supporters rather than periodic donations. Such income may qualify for tax relief in the hands of the charity whilst the payers reimburse themselves, by deduction of tax at source, in respect of the income tax that they have suffered. The donee of income by what is called a " seven year covenant " (namely, one couched in terms avoiding Income Tax Act, 1952, s. 392) gains no relief, however, from surtax. But for these advantages to be gained the payments made by the donor must be annual payments and must be received as pure income payments and not merely sums forming part of a profit and loss account. Before the charity claims relief from tax on sums received under covenants by showing that they are applicable *and* applied for charitable purposes only within the Income Tax Act, 1952, s. 447, such sums must first be shown to be annual payments and such cannot be said of sums paid in return for substantial consideration.

Facts and decision: The National Book League, a well-known and admitted charity, in addition to its main cultural activity of promoting the reading of good English and the writing of good English and generally the encouragement of literature in the highest sense of the word, provided incidental benefits to its members. These benefits, well advertised in the literature of the League, included the provision for the members of first-class club facilities in the centre of London. A reading-room, drawing room, a licensed bar and restaurant were all available for use by the members of the League in a beautiful house in the West End of London held on lease by the League. With the object of benefiting the League financially by securing rebates of income tax, the members were encouraged to sign " seven year covenants " in favour of the League by way of subscription, the rate for payment in such case being made lower than that payable if yearly membership only was taken.

The League contended, with success, before the Special Commissioners, that the covenanted sums were annual payments taxable (subject to exemption) under Case III of Schedule D (Income Tax Act, 1952, s. 123) by deduction and that the League was exempt from such tax as a charity. The Special Commissioners rejected the Crown's contention that the sums were not annual payments, the League providing therefor the amenities of membership including goods and services, concluding that these advantages were trifling and afforded no advantage of a substantial character and could be dismissed on the principle " *de minimis non curat lex.*"

Held: That it was quite impossible to say that the evidence established that the privileges of membership were trifling and illusory, that the subscriptions by covenant were partly to gain these advantages and that the payments were therefore not annual payments upon which the League was entitled to tax exemption. Mr. Justice Vaisey (at [1956] T.R. p. 326) referred to the payments as " payments to the incorporated body (the League) in return for which the subscriber got some substantial advantage, so that these payments cannot be described as pure income payments when they reached the hands of the League and those who conducted its affairs."

At the beginning of the judgment the learned judge drew attention to the fact that many persons who subscribe to charities by way of

"seven-year covenant" are under the misapprehension that they do not thereby bind themselves irrevocably to make the payments. No charity is recorded as having sued a covenantor on such a covenant but clearly there would be no defence to such a claim.

It is understood that an appeal against this decision may be made.

Escoigne Properties, Ltd. v. *C. I. R.* [1956] 1 W.L.R. 980; [1956] 3 All E.R. 33; [1956] T.R. 263 (Ch.D.)

Stamp duty—Conveyance on sale—Exemption

Statutory provisions: Stamp Act, 1891, ss. 54 and 58 (4) and Schedule I; Finance Act, 1930, s. 42; Finance Act, 1938, s. 50.

Point: An agreement for the sale of land being stampable only 6d. and no *ad valorem* stamp duty being exigible in respect thereof it is not uncommon in these days to find that where the purchaser is in close concert with the vendor no conveyance or transfer is executed, the purchaser's interest being protected by a land charge class C (iv) or appropriate notice. On the purchaser reselling a conveyance or transfer is then made by the vendor to the sub-purchaser, and *ad valorem* stamp duty is paid thereon, not on the aggregate value of the consideration passing from sub-purchaser to purchaser and from purchaser to vendor but only on the former (Stamp Act, 1891, s. 58 (4)). Where, however, a conveyance or transfer from the purchaser to the sub-purchaser of the property could have been exempt from *ad valorem* stamp duty had the property been vested in the purchaser and conveyed by him, it appears that the conveyance from the vendor direct to the sub-purchaser is likewise exempt.

Facts and decision: The vendor agreed to sell freehold and leasehold property to the first company in consideration for shares in that company, which shares were duly allotted to him. Four years later, after the vendor's death, the first company agreed to sell the property to the second company in consideration for shares in the second company. The property never having been conveyed by the vendor, his executors now conveyed the property direct to the second company, and the requisite conveyances and transfers were presented for adjudication. Immediately before the execution of the conveyance and transfer the first company was the beneficial owner of not less than 90 per cent. of the issued share capital of the second company, which latter company claimed that the conveyance and transfer were exempt from *ad valorem* stamp duty under the Finance Act, 1930, s. 42. This section exempts from *ad valorem* duty on a conveyance on sale an instrument the effect of which "is to convey or transfer a beneficial interest in property from one company with limited liability to another such company." The Crown contended first that this was not the effect of the conveyance and transfer but that if it was, then the exemption granted by the section was nevertheless lost by virtue of the Finance Act, 1938, s. 50. This section removes from the section 42 exemption instruments "executed in pursuance of or in connection

with an arrangement whereunder . . . (b) the beneficial interest in the property was previously conveyed or transferred directly or indirectly" by a person other than the transferor company, the transferee company or their associated companies. The vendor was clearly a person of this category.

Held: *Ad valorem* duty was not exigible on the conveyance and transfer, which operated (i) to convey the legal estate outstanding in the vendor's executors and (ii) to convey or transfer the beneficial interest already in the first company, and were thus within section 42 of the Finance Act, 1930.

Mr. Justice Vaisey would appear to have held that section 50 of the Finance Act, 1938, did not apply as there had been no previous transfer of property from the vendor to the first company (see [1956] 1 W.L.R. at p. 988), but to support the finding this must mean that "transfer" within the meaning of that section is narrower than the meaning in section 42, for he clearly determined that the "beneficial interest" had been transferred to the first company in order that section 42 could operate (see [1956] 1 W.L.R. at 1987). There may undoubtedly be a difference between the agreement between the vendor and the first company and that between the first company and the second company so far as passage of the beneficial interest is concerned, for in the former the consideration was "paid" prior to conveyance, but in the latter these two matters were contemporaneous. Nevertheless it is submitted that the judgment treats the *first* agreement in two different ways according to the section under consideration.

It is understood that an appeal against the decision may be made.

CORRESPONDENCE

To the Editor,
The Conveyancer and Property Lawyer

Intestate Succession

Dear Sir,

Full marks to Mr. Oliver Lodge for making our flesh creep! But must we interpret statutes so literally and subversively? One glimpse of the larger lunacy that Mr. Lodge has promised us—euphemistically termed "caprice"—should be warning enough. Let me commend to your readers the simple faith of Rupert Brooke's trout, admittedly based on the principle, *argumentum ab inconvenientia*:

> *This life cannot be all, they swear,*
> *For how unpleasant if it were!*

I agree with Mr. Lodge that section 47 (5) of the 1925 Act (as amended) is not happily phrased. But there is at least some ground for thinking that the expression "any class of relatives" (where it first occurs in that subsection) includes issue taking by substitution. The reference follows immediately upon subsection (4) which talks of a class "consisting of brothers or sisters of the whole blood of the intestate *and* issue of brothers or sisters of the whole blood of the intestate." I admit that it is clumsy drafting, whatever way one looks at it; but seeing that issue are brought in under the statutory trusts and also treated in subsection (4) as part of "the class," it seems that on a more liberal view they should also be treated as members of the class in subsection (5); the reference to "issue" at the end of that subsection must then of course be rejected as surplusage.

Seemingly we do not boggle at the notion that statutory trusts "for" (say) brothers and sisters may include nephews and nieces, although, if the maxim *expressio unius* were conscientiously applied, this proposition would be self-contradictory. By a similar elliptical and not wholly logical process, section 47 (1), which sets out the statutory trust for "the issue" of the intestate, provides in the first place for the intestate's children to the exclusion, more often than not, of remoter issue. We swallow these camels without a qualm, so why, I wonder, strain at the gnat of *expressio unius* in section 47 (5)? Once issue have been brought in under the statutory trusts, as they undoubtedly are, it should take more than legislative inadvertence to oust them.

It is significant, by the way, that section 46 (as amended and reproduced in the Schedule to the 1952 Act) employs more careful language. In paragraph (v) of subsection (3) of this section the phrase "*no person* takes an absolutely vested interest" is used correctly in three places. This is in marked contrast with the phrase "if there is no member of this class" used of grandparents, to whom, for obvious reasons, the statutory trusts do not apply.

Yours faithfully,
J. F. Turing.

London, October 18, 1956

THE LIBRARY

Tax Planning with Precedents. By D. C. Potter, LL.B. and H. H. Monroe, M.A., Barristers-at-Law, assisted by H. G. S. Plunkett, Barrister-at-Law, formerly one of H.M. Inspectors of Taxes. London: Sweet & Maxwell, Ltd. xxvii and 411 pp. (£2 10s.)

This new edition is some one-third longer than the first edition and contains one new chapter and seven new Precedents. The inevitable teething troubles of a new book have now been firmly dealt with and the new edition is well planned and eminently readable; in fact it may be regarded as the definitive edition.

Although the book went to press prior to the enactment of the Finance Act, 1956, the authors have produced in Appendix II the Precedent of a pension scheme for self-employed persons under the new provisions. This Precedent is an enlightened approach to the problem of tax-free saving, with a clear eye kept on the concurrent problem of inflation, and forms a welcome change from the hackneyed arrangements which are generally suggested as apposite to the new provisions. It is to be hoped that this Precedent will attract the attention of all professional bodies who, without exception, should now be making arrangements for their members.

Few changes in the law have occurred to necessitate alteration of the first edition, but much rewriting has been done, particularly in the chapters on Partnership, Variation of existing Settlements and Discretionary Trusts, the latter now containing a brief note on matters affecting shareholdings in the private family company. It is regretted that in discussing the question of the life tenant purchasing the reversion—now almost a common form practice—the authors still comment only on the practice relating to the "amount of the purchase price to be paid" and refrain from expressing any reasoned view as to the law (see page 211).

The new chapter on Marriage Settlements contains two Precedents departing from the traditional form, designed to utilise the "marriage consideration" to the best advantage and conserving the family wealth thereafter by avoiding taxation. Other fresh topics, or topics now dealt with in greater detail, include secured maintenance, valuation on gifts for estate duty policies under the Married Women's Property Act, variation of settlements by the court, protective trusts and investment in tax-free securities.

The book is very well produced by the publishers, the print, set-out, paper and binding being most acceptable, none of those irritating economies left over from the war being present. The book must be regarded as an invaluable asset to all who advise on the financial affairs of the individual. In these days to admit, as many unfortunately do, that one is ignorant of taxation matters, is almost a declaration of negligence. This book provides an over-all picture in one volume in an easy style and yet precise, which could not be otherwise culled by the non-expert without hours of patient study.

As to the future, it is suggested that service and pension agreements might be dealt with more fully in a separate chapter, as also might the problems relating to charities and subscriptions thereto. A discussion of Schedule A and other tax problems in connection with maisonettes and leases at premiums may now perhaps be considered within the scope of individual tax planning. Possibly such topics might replace superannuation

schemes, which are not really *ejusdem generis* with the major part of this work, and in any case are unlikely to necessitate much alteration in the near future.

D. R. S.

Tax Problems of the Family Company. By Milton Grundy, Barrister-at-Law. London: Sweet & Maxwell, Ltd. x and 173 pp. (17s. 6d.)

This is an excellent little book. The word "little" in this context should be taken as the highest of compliments. In the space of a small volume the learned author has explained in a clear and concise manner the elements of some of the most complex legislation on the Statute-book. The book gives a co-ordinated picture of the effect of taxation on the small private company and the family which are its shareholders. Mr. Grundy shows that the various taxes do not exist in watertight compartments, and whilst writing in a readable and interesting form he shows the necessity of considering all actions in the light of all taxes.

The book, which contains no references to authorities but nevertheless considerable detail, should appeal not only to the businessman at whom it is apparently directed but also to the lawyer and the accountant. For the first time there is a book which may be read in an evening which deals with the complicated structure of tax legislation in all its aspects. The book also indicates for further thought methods of deriving the greatest benefit from a company and contains sufficient material to justify the author's description of it as an *aide memoire* for the expert planning of the financial affairs of any family company. The only criticism which it is felt must be aimed at the book is that occasionally there is a failure to distinguish between what is Revenue practice and what is the law. This is, however, a minor criticism in a book of this nature, for Mr. Grundy has performed the admirable task of placing at the disposal of *any* reader a clear understanding of the basic taxation "control" of a family company in all its aspects.

D. R. S.

First Supplement to Dymond's Death Duties, 12th ed. By Robert Dymond and Reginald K. Johns. London: The Solicitors' Law Stationery Society, Ltd. xii and 76 pp. (8s. 6d.)

A supplement to Dymond is unfortunately amply justified by the growth of the law since publication of the book. Not only are there the important changes in the 1956 Finance Act couched in the guarded terms with which relieving legislation is so frequently enacted, but the courts have produced interesting material. All conveyancers will appreciate the consideration of the somewhat arid distinctions in the realm of settled policies of assurance created by *D'Avigdor-Goldsmid* v. *C. I. R.* [1953] A.C. 347 and *Re Barbour's Policies of Assurance* [1956] 2 W.L.R. 735 which may place the burden of escaping yet another estate duty charge on the draftsman. *Re Parke's Settlement* [1956] 1 W.L.R. 397 and *Re Weigall's Will Trusts* [1956] 3 W.L.R. 12, both capable of affecting a far wider field than their facts indicate, are brought firmly to notice, as is *Walker's Trustees* v. *Lord Advocate*, 1955 S.C.(H.L.) 74, a decision which may clear the air in relation to many "infant settlements" and cut their length by at least a page.

Undoubtedly all who profess to advise on estate duty problems own *Dymond*; they should likewise have the supplement. It is regretted, however,

that the authors appear willing to accept the "official view" without comment, even to the extent of deleting their own text (*Supplement*, p. 26; Married Women's Income Tax).

D. R. S.

We have also received:—

Current Legal Problems 1956. Edited by Professor George W. Keeton, m.a., ll.d., Barrister-at-Law, and G. Schwarzenberger, ph.d., dr.jur. Stevens & Sons, Ltd. 275 pp. (£1 12s. 6d.)

This year's series of lectures by members of the Faculty of Laws at University College, London, does not contain many of particular interest to conveyancers. Mrs. Karah's lecture on the Control of Monopolies and Restrictive Trade Practices and Mr. Scamell's on The Security of Tenure under the Landlord and Tenant Act, 1954, are already dated because so much has happened since they were delivered; in the former case the Bill under discussion has become law, in the latter case the new-born Act has already grown to adolescence as a result of the numerous cases already decided on it. Dr. Marshall's "Gifts in Favour of Sport and Recreation" is an interesting survey of the cases on the subject, together with an examination of how an intending donor's object can be achieved, which contains many suggestions for the practitioner. Although it has not been the conveyancer's turn this year, the annual is always welcome.

An Introduction to Equity. Fourth Edition. By Professor G. W. Keeton, m.a., ll.d., Barrister-at-Law. 382 and xl pp. Sir Isaac Pitman & Sons, Ltd. (£2 15s.)

Equity has shown considerable signs of life in the last few years, but we are left with the impression that these signs have not been reflected in the new edition. The *Diplock* case is mentioned on a number of pages, but the House of Lords decision does not appear to be cited, which is rather misleading, especially to a student. And we would have expected to see *Jones* v. *Maynard*, *Stockloser* v. *Johnson* and *Rose* v. *Pim* mentioned, to take three recent cases at random.

Apportionments for Executors and Trustees. Second Edition. By J. F. Josling, Solicitor. Oyez Practice Notes. The Solicitors' Law Stationery Society, Ltd. 39 pp. (3s. 6d.)

PRECEDENTS

FORM 1

Transfer of Freehold Flat in converted house the title to which has been previously registered, a Service company taking over the parts of the house used in common (*a*)

(*Drafted by K. E. B. Kemp, Barrister-at-Law*)

H. M. LAND REGISTRY

District: ——

Parish or Place: ——

Title No: ——

Property: The Freehold Land Shown and Numbered as Below on H. M. Land Registry General Map.

Short Description	Parcel No.	Sheet	Section	Date of First Registration

This Transfer is made the —— day of —— One thousand nine hundred and —— between House Converters Ltd. whose Parties.

(*a*) This precedent is intended for cases where the converter of a house into flats considers that some of the common devices for securing the performance of covenants relating to maintenance of the structure of the house and the parts used in common by flat owners are liable to deter would-be purchasers of the freehold flats. In the present case the main provision for enforcing positive covenants against subsequent purchasers of flats is contained in the preamble of the grant of easements in the Second Schedule "the purchaser and his successors in title . . . paying his or their due proportion . . . of the cost . . ." See *Aspden* v. *Seddon* 1 Ex.D. at p. 504. Where the burden attached to an easement was enforced against assignees of the easement, not on the footing of a covenant, but on the principle *qui sentit commodum sentive debet et onus*. The original converter usually wishes to be relieved of responsibility after sale of all the flats, hence the provisions for a service company.

registered office is situate etc. (hereinafter called "the Vendor") of the one part and John Homeseeker of etc. (hereinafter called "the Purchaser") of the other part

Recitals of definitions; WHEREAS:—

(1) In this Transfer the expressions and references contained in the first clause of the Third Schedule hereto shall have the meanings respectively given to them in such clause

of flat scheme; (2) The Vendor has recently converted the House into eight flats and laid out and offered for sale the Scheme Land in accordance with a general scheme to the intent that the owner for the time being of each and any of the said flats or of the said land or any part of the same might be able to enforce in equity or otherwise the performance and observance by the owners for the time being of the other flats or the said land or any part of the same of the covenants stipulations and conditions contained in this Transfer and the said Third Schedule

of agreement for sale; (3) The Vendor has agreed with the Purchaser for the sale to him for the sum of £—— of the premises hereinafter described (which comprise one of the eight flats) subject to the covenants stipulations and conditions hereinafter mentioned (but with the benefit thereof so far as the same is annexed to the premises hereby transferred) and subject to the easements hereinafter mentioned

Consideration. 1. Now in pursuance of the said agreement and in consideration of —— (£——) (the receipt whereof is hereby acknowledged) the Vendor as beneficial owner hereby Transfers to the Purchaser

Parcels. in fee simple ALL THAT flat or suite known as Flat No. —— on the —— floor of the premises now or recently known as The Barn, ——, —— in the County of —— (which flat is part of the land comprised in the above-mentioned title) and is delineated on the Plan B annexed to the Third Schedule hereto and thereon

Exceptions and reservations. coloured —— [Excepting thereout the Tank Room on the top floor of the House] (*b*) SUBJECT TO the exceptions and reservations contained in the First Schedule hereto AND with the benefit of the easements rights and privileges set out in the Second

(*b*) Words in brackets not required except in the transfer of the flat in which the Tank Room is situated.

Schedule hereto AND ALSO SUBJECT to and with the benefit (save as hereinafter mentioned) of the restrictive covenants mentioned in the Charges Register of such title so far as the same affect the premises hereby transferred and are still subsisting and capable of taking effect AND subject to and with the benefit of the covenants stipulations and conditions subject to and with the benefit of which the premises hereby transferred ought to be held owing to the same being part of the Scheme Land offered for sale by the Vendor in accordance with a Scheme affecting the same and the remainder of the Scheme Land the stipulations and conditions of which Scheme are set out in the Third Schedule hereto AND SUBJECT ALSO to all such easements rights privileges and benefits of way support and protection from the elements running and passage of water soil electricity and gas and rights ancillary thereto as by virtue of the assurances already executed by the Vendor of any others of the eight flats or otherwise are appurtenant to such parts of the Scheme Land as do not comprise the premises hereby assured The assurances in question are as follows:—

Vendor to be free to develop adjoining property.

[2. No objection shall be made or proceedings taken by the Purchaser at any time in respect of the erection on the land comprised in the said title other than the Scheme Land of any building or buildings in contravention of stipulations 5 and 6 (or either of them) of the restrictive covenants mentioned in the Charges Register of the said title] (*c*)

Purchaser's covenants.

3. THE Purchaser with the intent to bind the premises hereby transferred into whosesoever hands the same may come (but not so as to be personally liable under this covenant in respect of any breach of a restrictive covenant occurring after he shall have ceased to be the registered proprietor of the premises hereby transferred) and for the benefit of the remainder of the Scheme Land and every part thereof hereby covenants with the Vendor and also (as separate covenants) with each person who is now or shall hereafter become the registered proprietor or

(*c*) Only required where the Vendor retains adjoining land.

owner of any part of the remainder of the Scheme Land to observe and perform the stipulations and conditions contained in the said Third Schedule so far as the same ought to be observed and performed by the owner or occupier of the premises hereby transferred

Vendor's covenants.

4. The Vendor with the intent to bind the Scheme Land (other than the premises hereby transferred) and every part thereof into whosesoever hands the same may come (but not so as to be personally liable under this covenant in respect of any breach of a covenant occurring after the Vendor shall have ceased to be the registered proprietor or owner of such land) and for the benefit of the premises hereby transferred hereby covenants with the Purchaser to observe and perform the stipulations and conditions contained in the said Third Schedule so far as the same ought to be observed and performed by the owner or occupier of such land

Purchaser's covenant to indemnify.

5. The Purchaser hereby further covenants with the Vendor as a covenant additional to and not in any wise in derogation from the covenant by the Purchaser hereinbefore contained and by way of indemnity to observe and perform the stipulations and conditions contained in the said Third Schedule and in the said Charges Register respectively

Certificate of value.

6. [Certificate of value, if required]

* * * *

The First Schedule above referred to

Except and reserving in fee simple to the Vendor and the owners and occupiers of the Retained Land and the eight flats (other than the flat hereby assured) respectively

1 Such rights of support and protection from the elements for such land and flats over and from the premises hereby transferred as are at present enjoyed by such land and flats or are necessary to preserve for the owners for the time being of such land and flats the right to enjoy such facilities and benefit in the nature of support or protection from the elements as have hitherto been enjoyed over or in respect of the premises hereby

transferred by reason of such premises and the said land and flats or any part thereof having been in common ownership

2 The full and free running and passage of water soil electricity gas smoke and fumes through and along such parts of the water and other pipes sewers drains tubes cables wires and apparatus chimneys and flues (hereinafter together referred to as "conduits") in or on the property hereby transferred as lead to or from or serve the rest of the Scheme Land or any part thereof

3 The right to erect and maintain on and have supported by the House in a reasonable position telephone wires and cables and aerials for the reception of radio or television signals with appropriate leads-in for the same

4 The right at all reasonable times and with or without servants workmen and others to enter upon the premises hereby transferred for the purpose of maintaining or decorating the remainder of the Scheme Land not hereby transferred the conduits or the said aerials or leads-in but doing no unnecessary damage by or in the course of such entry maintenance or decoration and making good all damage done thereby or in the course thereof

* * * *

THE SECOND SCHEDULE ABOVE REFERRED TO

TOGETHER with the following easements rights and privileges the Purchaser and his successors in title owners of the premises hereby transferred paying his or their due proportion (as provided in the Third Schedule hereto) of the cost (including the estimated cost) of all works and things mentioned in such Third Schedule that is to say:—

1. Full and free right for the Purchaser and his successors in title the owners or occupiers of the premises hereby transferred his and their undertenants and servants (in common with all other persons entitled thereto) at all times

(a) For all purposes of domestic use and convenience incident to the occupation of the premises hereby transferred

to go pass and repass on foot (and in the case of the drive hereinafter mentioned with or without motor-cars and other vehicles) through over and along the drive giving access to the House from the public road and the entrance doors halls passages and stairways of the House giving common access to the flats therein and the cellar in the basement of the House [and (in case of emergency or necessity only) through the doors and passage way in the flat on the top floor of the House which gives access to the Tank Room on such top floor PROVIDED ALWAYS that nothing herein contained shall prevent the owner or occupier of the last-mentioned flat from normally keeping the door thereof locked] (*d*)

(b) To use for the purpose of storage of fuel the compartment marked with the number of the flat hereby transferred which is situate in the cellar of the basement of the house

(c) To use and enjoy the garden or grounds forming part of the Scheme Land

(d) To use the covered shelter for purposes of identification coloured green on the plan marked A annexed to the Third Schedule for the purpose only of placing and keeping therein a receptacle for rubbish and depositing rubbish in such receptacle

2. Such easements and benefits in the nature of support and protection from the elements for the premises hereby transferred over and from the rest of the Scheme Land and every or any part thereof as are now enjoyed by the premises hereby transferred or as are necessary to ensure for the estate owner for the time being of the premises hereby transferred the right to enjoy such facilities and benefits in the nature of support and protection from the elements for the premises hereby transferred as have hitherto been enjoyed over or in respect of the rest of the Scheme Land or any part thereof by reason of the premises hereby transferred and the rest of the Scheme Land or any part thereof having been in common ownership

3. Full and free running and passage of water soil electricity gas smoke and fumes through and along such parts of the water

(*d*) Words in brackets required in every case except in the transfer of the flat in which the Tank Room is situated.

and other pipes sewers drains tubes cables wires and apparatus chimneys and flues (hereinafter together referred to as "conduits") leading to or from or serving the premises hereby transferred as pass through over or under any part of the Scheme Land not hereby transferred

4. The right to erect and maintain on and have supported by the House in a reasonable position telephone wires and cables and an aerial or aerials for the reception of radio or television signals with appropriate leads-in for the same

5. The right at all reasonable times and with or without workmen and others to enter upon the parts of the Scheme Land not hereby transferred for the purpose of maintaining or decorating the premises hereby transferred the conduits or the said aerials or leads-in but doing no unnecessary damage by or in the course of such entry maintenance or decoration and making good all damage done thereby or in the course thereof

6. The benefit of the respective covenants to observe and perform the stipulations and conditions (corresponding with the stipulations and conditions contained in the said Third Schedule) contained in any assurance by the Vendor or any of the others of the eight flats being covenants by the grantee of the flat comprised in such assurance

THE THIRD SCHEDULE ABOVE REFERRED TO

1. In this Schedule:—

(a) The expression "the Scheme Land" means all that land delineated on the Plan A annexed to this Schedule and thereon surrounded by a red verge line including the buildings erected thereon

(b) The expression "the House" means the buildings erected on the Scheme Land

(c) The expression "the eight flats" means all those eight flats on the [three] floors of the House as the same are for identification delineated on Plan B annexed hereto and thereon coloured in various colours

(d) References to any particular flat [do not include the porch

marked on the said Plan B and] (*e*) include the walls ceilings and floors bounding the same but where such wall ceiling or floor is adjacent to another flat or any other part of the Scheme Land only to the extent following:—

(i) In the case of a wall only that half thereof (severed vertically) which is nearest to the particular flat

(ii) In the case of a ceiling so far as the horizontal plane immediately below the joists or rafters or roof timbers of the floor or roof supporting such ceiling

(iii) In the case of a floor so far as the horizontal plane immediately below the joists supporting such floor or in the case of a floor composed of a material other than wood the horizontal plane immediately below such other material

(e) The expression "the Retained Land" means all the Scheme Land other than the eight flats (but including the roof of the House)

(f) The expression "maintain" includes inspect renew keep in good repair and keep clean and tidy and (in relation to the garden) cultivated: in relation to the retained land and to exterior parts of the House the expression "repair" includes decorative condition: and the expressions "maintaining" and "maintenance" shall be construed accordingly

(g) The expression "insure" means insure against fire storm flood and tempest and other risks normal in a comprehensive fire policy and the expression "insurance" shall be construed accordingly

(h) The expression "the external parts" in relation to a flat means the walls and the joists or other supports of the floor bounding each flat excluding doors windows and window frames

(i) The expression "estimated cost" in relation to any works or things means the cost as estimated by House Converters Ltd. the Service Company or other the registered proprietor for the time being of the Retained Land (as the case may be) of such works or things as such Company or registered proprietor may consider requisite or necessary

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(*e*) The necessity for the words in brackets or similar words will depend on circumstances.

(j) The expression "person" includes company

(k) The expression "the Service Company" means the company to be incorporated in accordance with the provisions hereinafter contained

(l) The expression "his due proportion" in relation to any flat owner means such proportion as the rateable value of the flat of that flat owner bears to the aggregate amount of the respective rateable values of all the eight flats

(m) The expression "Flat Owner" in relation to any of the eight flats shall include the purchaser from House Converters Ltd. of such flat and the registered owner for the time being of such flat and also the personal representatives of a deceased registered proprietor

2. After the completion of the sale by House Converters Ltd. of the last of the eight flats and in any event before the Thirty first day of December One thousand nine hundred and —— House Converters Ltd. shall procure to be incorporated a private company limited by guarantee to be called The Barn Limited or some other suitable name and shall without consideration transfer to such company all the Retained Land together with benefit of and subject to such easements covenants stipulations and conditions as concern or affect the same or the registered proprietor thereof under the provisions hereof or otherwise The Memorandum and Articles of Association of the Service Company shall be in such form as House Converters Ltd. consider appropriate and shall (inter alia) make provision for the following matters

(i) That there shall be two classes of members namely Owner Members and Ordinary Members of whom Owner Members shall but Ordinary Members shall not be entitled to vote

(ii) That each Member shall be liable on the winding up of the Service Company to contribute to its assets a sum not exceeding ten shillings

(iii) That each Owner Member shall be entitled to elect one Ordinary Member in the event of the number of Members falling below two

(iv) That the Service Company may do any of the works and things following:—that is to say all works and things requisite

or necessary for maintaining the Retained Land and the external parts (including decorating the window frames and any wood or metal work on such parts) of each of the eight flats insuring the Scheme Land providing lighting facilities (including electricity) for and paying the rates and taxes including water rate (if any) assessed on the Retained Land (including rates and taxes assessed on or payable by the owner or occupier of the Retained Land) and (in case of destruction or damage by fire storm flood or tempest) for rebuilding repairing and reinstating all parts of the Scheme Land

3. (1) The Flat Owner in respect of each of the eight flats shall so soon as is practicable become and so long as he is the registered proprietor thereof remain an Owner Member of the Service Company

(2) The Flat Owner shall on demand and from time to time pay to the person who is for the time being the registered proprietor of the Retained Land his due proportion of the estimated cost of the said works and things and the amount of such due proportion shall be a charge on and deemed to arise out of such flat and the premises of which such Flat Owner is the registered proprietor PROVIDED ALWAYS that if the actual cost of carrying out such works and things is less or more than the estimated cost the Flat Owner's due proportion of the difference shall forthwith (as the case may be) be credited to the Flat Owner or be paid by him on demand to such person and be deemed to form part of the first-mentioned due proportion.

4. (1) Until the Service Company is registered as proprietor of the Retained Land House Converters Ltd. and after such registration the Service Company or other the registered proprietor of the Retained Land shall upon payment by the Flat Owners of each of the eight flats of their due proportions of the estimated cost thereof do the said works and things

(2) If and so far as the works and things aforesaid are not done by the registered proprietor for the time being of the Retained Land all the Flat Owners in respect of the eight flats shall do the same each of them paying his due proportion of the cost thereof and in the event of the Scheme Land or any part

thereof being destroyed or damaged by fire storm flood or tempest all insurance moneys payable in respect of such destruction or damage shall be applied in or towards the rebuilding repairing or reinstating of the destroyed or damaged premises

5. (1) No flat or any part thereof shall be used or permitted or suffered to be used otherwise than as a private dwelling-house

(2) No business or trade shall be carried on or be permitted or suffered to be carried on in or upon any flat

(3) No sign or advertisement (save in respect of each flat the name of the occupier thereof contained in a sign not exceeding six inches by nine inches in size and of neat and unobtrusive design and colouring) shall be placed on any part of the Retained Land or on or in any flat so as to be visible from the exterior thereof

(4) No flat shall be suffered or permitted by its registered proprietor to be or become in such a state of disrepair or bad decorative condition as to affect or tend to affect detrimentally any of the other eight flats or the owners or occupiers thereof

6. No alteration or addition shall be made or suffered or permitted to be made to the structure of any flat nor shall the walls thereof (including the woodwork or metal work incorporated therein) which form part of the exterior of the House be decorated otherwise than in accordance with the colour scheme of the whole of the House

7. No chattels or rubbish shall be deposited or left upon any part of the Retained Land save that (a) a receptacle for rubbish may be placed in the covered shelter which is for identification coloured green on the said Plan A and (b) the cellar in the basement of the house may be used by the occupier of each flat for the storage of fuel as hereinbefore provided

8. Nothing shall be done or permitted or suffered to be done in or on any flat or the Retained Property which may be or become or tend to be or become a nuisance or annoyance or damage to the owners or occupiers of any of the others of the eight flats or the owners of the Retained Land or the owners or occupiers of any neighbouring property. Without prejudice

to the generality of the foregoing any unreasonable noise made by animals musical instruments radio or television apparatus motor-cars or loud conversation and the exposure to the view of persons outside the flat of wearing apparel or bed or other linen in the course of drying or airing the same shall be deemed to be such annoyance as aforesaid

9. Nothing shall be done or omitted on or in any flat or the Retained Property which shall or might invalidate any insurance policy effected under the provisions hereof or cause the premium thereof to be increased

The Common Seal etc.

FORM 2

Agreement for the Employment by a Company of a Part Time Adviser entered into by a person about to acquire a controlling interest in the Company.

(*Drafted by C. R. D. Richmount, of Lincoln's Inn*)

THIS AGREEMENT is made the —— day of —— 19— BETWEEN etc. of etc. (hereinafter called "Mr. A") of the first part B Limited whose registered office is situate etc. (hereinafter called "the Company") of the second part and C of etc. (hereinafter called "Mr. C") of the third part.

WHEREAS:— Recitals:

(1) By and under the terms of an Agreement (hereinafter called "the Principal Agreement") dated the —— day of —— 19— and made between X of the one part and Mr. A of the other part Mr. A has agreed to purchase from the said X certain shares in the Company in the manner therein provided and upon completion of his said purchase will have control of the Company. of agreement to acquire shares;

(2) In anticipation of the Principal Agreement being carried into effect the parties hereto are desirous of entering into this Agreement. of parties' desire;

(3) The unissued capital of the Company consists of —— shares of £1 each. of unissued share capital.

NOW THIS DEED made in consideration of the premises WITNESSETH AND IT IS HEREBY AGREED as follows:— Testatum.

1. As soon as the sale and purchase to and by Mr. A under the terms of the Principal Agreement shall have been duly completed Mr. A shall procure the Company to pass a special resolution and Mr. A and the Company shall take such other steps as may be necessary for the purpose of converting the said shares of £1 each of the Company which remain unissued into —— cumulative Preference Shares of £1 each enjoying the rights and being subject to the conditions following that is to say:— Conversion of unissued ordinary shares into Preference Shares.

(i) The said Preference Shares shall carry the right to a fixed

cumulative preferential dividend at the rate of —— per centum per annum on the capital paid up thereon respectively.

(ii) The said Preference Shares shall rank both as regards dividend and return of capital *pari passu* with any further preference shares created as hereinafter mentioned and in priority to all other shares in the Company but shall not confer any further right to participate in profits or assets.

(iii) The Company is to be at liberty from time to time to create and issue further preference shares ranking in all respects *pari passu* with the said Preference Shares but so that the aggregate amount in nominal value of all preference shares aforesaid for the time being issued (including the said shares) shall never exceed the aggregate amount in nominal value of the Ordinary Shares for the time being issued.

(iv) The preference shares shall not confer any right of voting at any general meeting of the Company nor unless the Company shall otherwise resolve in General Meeting shall they qualify any person to be a director of the Company.

(v) In the event of the Company being wound up the surplus assets thereof shall be applied in the first place in repaying to the holders of the said Preference Shares and of any other shares entitled to rank *pari passu* with them the full amount paid up thereon and secondly in paying off the arrears (if any) of the preferential dividend aforesaid up to the commencement of the winding up whether declared earned or not and subject as aforesaid such surplus assets shall belong to and be divided among the other members of the Company.

Agreement to purchase shares by employee.

2. After such special resolution and steps as aforesaid shall have been passed and taken Mr. C shall forthwith apply to the Company to have allotted to him for the cash sum of £—— the said —— Preference Shares and the Company shall upon receipt of the said sum of £—— allot and issue the said Preference Shares to Mr. C.

Terms of employment.

3. As and from the time of the allotment of the said Preference Shares to Mr. C the Company shall employ Mr. C and Mr. C shall serve the Company as [*business, technical, general,*

or as the case may be] adviser to the Company on the terms and subject to the conditions following that is to say:—

(i) The engagement shall continue so long as Mr. C shall remain the registered holder of the said Preference Shares but shall be subject to determination as hereinafter provided.

(ii) Mr. C shall devote such time to the Company's affairs as the directors of the Company for the time being acting on behalf of the Company may from time to time consider desirable [but it is hereby declared that it is not intended that the engagement shall be a full time one].

(iii) During the continuance of his engagement Mr. C shall be entitled by way of remuneration to such a sum as shall be equivalent to —— per cent. of the gross sale returns of the Company in respect of sales made by the Company during the period of Mr. C's engagement hereunder after deducting purchase tax (if any) Provided that if and so far as the gross sale returns aforesaid shall in any financial year of the Company exceed the sum of £—— then in respect of the excess of such returns Mr. C shall only be entitled to a sum equivalent to —— per cent. of such excess.

(iv) The above-mentioned remuneration shall be paid within 21 days after the issue of the certificate of the Auditors of the Company hereinafter provided for.

(v) Within one month after the end of each financial year of the Company ending on the —— day of —— the Company shall cause its Auditors to prepare an account showing therein the gross sale returns of the Company for such year upon which Mr. C is entitled to be paid remuneration under and pursuant to the provisions of sub-clause (iii) hereof and to certify in writing the amount of Mr. C's remuneration to which he is entitled as aforesaid and unless some error shall be discovered within fourteen days after the issue of the aforesaid certificate of the said Auditors such certificate shall be conclusive evidence as to the amount of Mr. C's remuneration and shall be final and binding upon Mr. C and the Company.

(vi) On the first day of each month the Company shall repay to Mr. C all out of pocket expenses properly incurred by him in

the discharge of his duties hereunder during the preceding month.

(vii) Mr. C shall be entitled to [six] weeks holiday during each year at such time or times as the directors of the Company may consider convenient.

(viii) Mr. C's engagement hereunder may be determined forthwith by the Company, upon the exercise of the option hereinafter granted to Mr. A or upon the happening of any of the following events that is to say:—

(a) In the event of Mr. C ceasing to hold in his own right any of the said Preference Shares to be allotted to him pursuant to the provisions of this Agreement.

(b) Gross default or misconduct or breach or non-observance of any of the stipulations herein contained on the part of Mr. C.

(ix) If Mr. C's engagement hereunder shall through any cause whatsoever cease during the currency of any financial year of the Company the remuneration if any earned by Mr. C prior to such cessation and remaining unpaid by the Company shall be paid to Mr. C or his personal representatives within 21 days after the issue of the certificate of the Auditors provided for in sub-clause (v) hereof.

(x) For a period of [five] years next after the determination of Mr. C's engagement hereunder and at all times during the said engagement Mr. C shall not on behalf of himself or of any other person or persons or company except the Company itself canvass or solicit orders from any person or persons companies or firms who shall at any time during the continuance of his engagement have been a customer of the Company and as and by way of a separate covenant on the part of Mr. C shall not directly or indirectly be concerned or engaged or interested in any business of a kind similar to the business carried on by the Company during the continuance of Mr. C's engagement with the Company within a radius of twenty-five miles from the place of the said registered office of the Company.

Option to purchase employee's shares.

4. As and from the time when Mr. C shall be allotted the said Preference Shares referred to in clause 2 hereof Mr. A shall have and become entitled to and Mr. C hereby grants to Mr. A

the exclusive option or right at any time to purchase the aforesaid Preference Shares on and subject to the following terms and conditions that is to say:—

(i) The price to be paid by Mr. A for the said shares shall be the sum of £——.

(ii) The said option shall be exercised (if at all) by Mr. A serving a notice in writing in that behalf by registered post (a) during the lifetime of Mr. C upon Mr. C at the address hereinbefore set forth or such other address as may hereafter be notified to Mr. A for the purpose; (b) after the death of Mr. C upon Mr. C's personal representatives Provided that the said option shall not be capable of being exercised after the expiration of [twelve] months from the date when representation shall be granted of the estate of Mr. C or more than 21 years after the death of Mr. C.

(iii) In the event of the said option being exercised as herein provided Mr. A shall within 14 days thereafter pay to Mr. C or his personal representatives as the case may be the said sum of £—— and Mr. C or his personal representatives shall thereupon deliver to Mr. A the certificate relating to the said Preference Shares issued by the Company together with a transfer of such shares duly executed by him or his personal representatives in favour of Mr. A or as he shall direct.

(iv) For the purposes of this clause the expression "Mr. A" shall be deemed to include his executors administrators and assigns.

Employee's right to require exercise of the option.

5. Mr. A hereby agrees with Mr. C that if required in writing by Mr. C or his personal representatives so to do during Mr. C's life or within one year after Mr. C's death he Mr. A will duly exercise the option granted to him under the terms of clause 4 hereof.

IN WITNESS, etc.

FORM 3

Will Settling Residue on Several Persons for Life and on the Death of the Survivor for Their Children per capita, Framed to Reduce Estate Duty (*a*).

(*Drafted by E. H. Bodkin, of Lincoln's Inn.*)

This is the last will and testament of me A of —— in the County of —— which I make this —— day of —— 19— hereby revoking all other wills and testamentary dispositions by me heretofore made

Appointment of executors and trustees.

1. I APPOINT B of —— and C of —— (hereinafter called my trustees) to be the executors and trustees of this my will AND I DECLARE that the expression my trustees shall include the said B and C and the survivor of them or other the trustees for the time being of this my will

Legacies.

2. I GIVE the following legacies all free of all death duties namely—

Devise and bequest of residue.

3. I DEVISE and bequeath all the real and personal property whatsoever and wheresoever of or to which I shall be possessed or entitled at my death or over which I shall then have a general power of appointment or disposition by will except property otherwise disposed of by this my will or any codicil hereto Unto my trustees Upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same that is to say

UPON TRUST that my trustees shall sell call in collect and convert into money the said real and personal property at such time or times and in such manner as they shall think fit (but as

(*a*) The object of this Precedent is to reduce estate duty on the death of the survivor of the life tenants by making the fund pass only to the extent by which the shares of the children are increased so as to secure equality. The children of deceased life tenants will, of course, get the income *per stirpes* until the death of the survivor, but cannot be paid the capital except under a power of advancement, which may if desired be excluded. The Precedent is primarily intended for use where the estate is large. It could be adapted to cases where the shares of income are unequal; but the alterations in the shares to secure equality would usually prevent any substantial saving in estate duty.

to reversionary property not until it falls into possession unless it shall appear to my trustees that an earlier sale would be beneficial) but with power to postpone the sale calling in or conversion of the whole or any part or parts of the said property [including leaseholds or other property of a terminable hazardous or wasting nature] during such period as they shall think proper and to retain the same or any part thereof in its actual form of investment without being responsible for loss AND I DIRECT that the income of such of the same premises as for the time being shall remain unsold (including the income of property subsequently required for payment of my funeral and testamentary expenses and debts and the legacies duties and other moneys in payment whereof the proceeds of such sale calling in and conversion are hereinafter directed to be applied) shall as well during the first year after my death as afterwards be applied as if the same were income arising from investments hereinafter directed to be made of the proceeds of sale thereof and that no reversionary or other property not actually producing income shall be treated as producing income for the purposes of this my will

Trust for payment of debts, etc.

4. My trustees shall out of the moneys to arise from the sale calling in and conversion of or forming part of my said real and personal property pay my funeral and testamentary expenses (including all estate duty leviable at my death in respect of my residuary estate) and debts and the legacies bequeathed by my said will or any codicil hereto and all death duties and other moneys which under or by virtue of any direction or bequest free of duty contained in this my will or any codicil hereto are payable out of my general personal estate and make provision for the payment of any annuities hereby or by any codicil hereto bequeathed by me and in relation to such payments and provisions the rule of equity called the rule in *Allhusen* v. *Whittell* shall be disregarded

Investment of proceeds.

5. My trustees shall at their discretion invest the residue of the said moneys in or upon any of the investments hereby authorised with power to vary or transpose such investments for or into others of a nature hereby authorised

Trusts of residue.

6. My trustees shall stand possessed of the residue of the said moneys and the investments for the time being representing the same (all of which premises are hereinafter referred to as the Trust Fund) upon the trusts following that is to say—

(a) Upon Trust for D, E and F (who are hereinafter referred to as the beneficiaries) in equal shares PROVIDED that the share in the Trust Fund directed to be held in trust for each of the beneficiaries shall not vest in him or her absolutely but shall be retained by my trustees upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same that is to say

(b) Upon Trust to pay the income of such share to the beneficiary during his or her life

(c) From and after the death of the beneficiary my trustees stand possessed of such share IN TRUST (subject to the provision for divesting hereinafter contained) for all or any the child or children of the beneficiary living at his or her death and the child or children then living of any deceased child of the beneficiary who (whether children or grandchildren) being male attain the age of 21 years or being female attain that age or marry under that age if more than one in equal shares [but so that the children of any deceased child shall take equally between them only the share which their parent would have taken had he or she attained a vested interest] (*b*)

(d) If the trusts hereinbefore declared concerning the share of the beneficiary shall fail or determine at any time before the death of the survivor of the beneficiaries such share and any additional share which may accrue or be added thereto by virtue of this present provision shall go and accrue by way of addition to the share or shares of the other beneficiaries or beneficiary if more than one in equal shares and so that the share which shall so accrue and be added to the share of any beneficiary shall be held upon the trusts and with and subject to the powers and provisions herein declared and contained concerning his or her original share or as near thereto as circumstances permit

(*b*) If the children and grandchildren are to take *per capita*, omit the words in square brackets and add the words "*per capita*."

(e) On the death of the last survivor of the beneficiaries my trustees shall stand possessed of the capital and future income of the Trust Fund IN TRUST in equal shares *per capita* and not *per stirpes* for all or any the children or child of all the beneficiaries who shall be living at their respective deaths and the children or child living at the respective deaths of the beneficiaries of any child of the beneficiaries who shall predecease him or her who (whether children or grandchildren) being male attain the age of 21 years or being female attain that age or marry under that age and if more than one in equal shares [but so that the children of any deceased child shall take equally taken if he or she had attained a vested interest] And for the between them only the share which their parent would have purpose of securing that the hereinbefore mentioned class shall take equally between them as aforesaid it is hereby declared that the share or shares of any children or grandchildren of each of the beneficiaries [other than the survivor of the beneficiaries] shall on the death of such survivor if necessary be increased or reduced by the appropriate fraction and their then expectant or defeasable shares shall be increased or divested to the extent only of such fraction

(f) The statutory power of maintenance shall apply to the shares of the beneficiaries and their children but the statutory power of advancement shall not apply until the death of the last survivor of the beneficiaries

[7. Investment clause]

[8. Power to appropriate]

[9. Power to act on Counsel's opinion]

[10. Power for Solicitor trustee to charge]

[11. Power to appoint new trustees]

IN WITNESS etc.

FORM 4

Grant of Water Rights with Cross Covenants

(Drafted by Ernest H. Scamell)

Parties. THIS DEED OF GRANT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Grantor") of the one part and B of *etc.* (hereinafter called "the Grantee") of the other part

WHEREAS:—

Recitals: seisin of Grantor; (1) The Grantor is the estate owner in fee simple in possession of the land and premises situate and known as —— and more particularly shown on the plan annexed hereto and thereon edged in red (hereinafter called "the red land")

seisin of Grantee; (2) The Grantee is the estate owner in fee simple in possession of the land and premises situate and known as —— and more particularly shown on the said plan and thereon edged in blue (hereinafter called "the blue land")

position of water supply; (3) Both the blue land and the red land are supplied with water through pipes running from the main of the Metropolitan Water Board (hereinafter called "the Board") through and across the red land

(4) The Grantee is intending to erect a dwelling-house and garage on the blue land

(5) The Grantor is liable to the Board for the payment of all water rates and charges payable in respect of the blue land and the red land

(6) The Grantor has agreed for the consideration hereinafter mentioned to grant to the Grantee such easements rights and privileges as are hereinafter contained

Now in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Grantee to the Grantor (the receipt whereof is hereby acknowledged) and of the covenants on the part of the Grantee hereinafter contained THIS DEED WITNESSETH as follows:—

Grant of easements. 1. The Grantor as Beneficial Owner doth hereby grant unto the Grantee ALL THOSE easements rights and privileges set forth

in the First Schedule hereto TO HOLD the same unto the Grantee in fee simple

Grantee's warranties.

2. The Grantor hereby undertakes and warrants as follows that is to say:

(1) that all the water supply pipes referred to in the First Schedule hereto are in good condition and state of repair;

(2) that the said pipes comply in all respects with the requirements relating to such pipes laid down by the Board

(3) that the water supply pipes which exclusively serve the blue land (which pipes are for the purpose of identification only shown running between the points marked X and Y on the said plan) were laid in 19— under the supervision and in compliance in all respects with the requirements of the Board

Grantee's covenants:

3. The Grantee with the intent to bind all persons who shall for the time being be the owner of any estate or interest in or the occupier of the blue land (but save as hereinafter provided not so as to be personally liable under this clause after he shall have parted with all his estate and interest in the blue land) hereby covenants with the Grantor for the benefit of the red land that he will from time to time and at all times hereafter:

to pay proportion of water rate;

(1) Pay to the Grantor by way of indemnity all such sums as shall from time to time be properly paid by the Grantor to the Board in respect of all water rates and charges (if any) from time to time exclusively attributable to the blue land Provided that (a) the decision of the Board as to what rates and charges (if any) are for the time being exclusively attributable to the blue land shall for the purposes of this Deed be conclusive and binding and (b) that the sums referred to in the foregoing provisions of this clause shall only become payable by the Grantee on production to him of the official receipt of the Board acknowledging payment of the said water rates and charges

to contribute towards repairs;

(2) Contribute towards the proper costs and expenses of maintaining and keeping in good repair and condition such of the water supply pipes running from the main of the Board as are or shall from time to time be enjoyed or used by the owners or occupiers of the blue land in common with the owners or occupiers of the red land or any other land Provided that

(a) the Grantee shall not be liable to make any contribution under the foregoing provisions of this clause unless before the said costs and expenses are incurred an estimate thereof shall have been produced or made to the Grantee and approved by him such approval not to be unreasonably withheld and (b) the amount of the said contribution to be made by the Grantee shall be that proportion of the said costs and expenses which the amount of the water rate (if any) for the time being exclusively attributable to the blue land as aforesaid shall bear to the total amount of the water rate payable in respect of the property served by the pipes in respect of which the said costs and expenses shall have been incurred or one half of the said costs and expenses whichever shall be the less

to comply with supply regulations;

(3) Observe and comply with all the requirements and restrictions as to use and otherwise from time to time laid down by the Board in respect of the water supply to the blue land and in respect of such of the water supply pipes as shall be used and enjoyed exclusively by the Grantee

not to cause water supply to be cut off.

(4) Not to do or permit or suffer to be done or neglect to do any act or thing which might render the water supply to the red land liable to be cut off by the Board

Grantor's covenants:

4. The Grantor with the intent to bind all persons who shall for the time being be the owner of any estate or interest in or the occupier of the red land (but save as hereinafter provided not so as to be personally liable under this clause after he shall have parted with all his estate and interest in the red land) hereby covenants with the Grantee for the benefit of the blue land that he will from time to time and at all times hereafter:

to pay water rate;

(1) Promptly pay or procure to be paid all such rates charges and payments as the Board may from time to time properly demand in respect of the water supply to the red land and the blue land and any other property which may for the time being be served with water from the Board's main by any of the pipes which also serve the blue land and pay all such sums as under the provisions of clause 7 hereof are declared to be debts owed to the Grantee

(2) Observe and comply with all requirements and restrictions as to use and otherwise from time to time laid down by the Board in respect of the water supply to the red land and any other land served by the same supply and in respect of the water pipes on the red land and other land aforesaid — to comply with supply regulations;

(3) Keep and maintain in good and sufficient repair and condition such of the water supply pipes or any substitution therefor running from the main of the Board as are or shall from time to time be enjoyed or used by the owners or occupiers of the red land or any other land or any part thereof in common with the owners or occupiers of the blue land or any part thereof — to repair;

(4) Permit the Grantee and his agents with or without workmen and others at all reasonable times on notice (except in the case of an emergency) to enter into and upon the red land or any part thereof and take all such reasonable steps and measures as may be necessary to test inspect cleanse repair maintain alter or replace such of the water pipes as exclusively serve the blue land the Grantee causing as little disturbance as possible and making good all damage caused — to permit Grantee to enter;

(5) Save as provided by clause 7 (1) hereof not cut off or cause or suffer to be cut off the water supply to the blue land or do or permit or suffer to be done or neglect to do any act or thing which may render the water supply to the blue land liable to be cut off by the Board — not to cause water supply to be cut off;

(6) Not do or permit or suffer to be done on the red land or any part thereof any act or thing which may (a) damage or disturb the water pipes serving the blue land or (b) prevent interfere with or render more difficult the testing inspection or repair of the said pipes or (c) diminish interfere with or damage the purity flow or pressure of water coming through or carried by the said pipes — not to interfere with flow of water.

(7) Do or cause to be done all such other acts and things as may from time to time be requisite for ensuring an uninterrupted supply and flow of the Board's water to the blue land through the water supply pipes running from the Board's water main to the blue land.

5. The Grantee hereby further covenants with the Grantor — Grantee's further covenant.

that if and when the Grantee shall transfer or create any legal estate in the blue land in favour of any other person or persons the Grantee shall procure such other person or persons to enter into the following covenants which shall be expressed to be for the benefit of and enforceable by the Grantor or other the owner or owners for the time being of a legal estate in the red land or any part thereof to the intent that such covenants may be enforced directly against such other person or persons aforesaid by the owner or owners for the time being of the red land or any part thereof that is to say: (1) covenants in terms similar to the covenants contained in clause 3 hereof or as near thereto as the circumstances will permit or require (2) a covenant in terms similar to the present covenant or as near thereto as the circumstances will permit or require And it is hereby declared that unless and until the Grantee shall comply with the terms of this further covenant he shall be and remain personally liable to perform and observe the covenants contained in clause 3 hereof

Grantor's further covenant.

6. The Grantor hereby further covenants with the Grantee that if and when the Grantor shall transfer or create a legal estate in the red land or any part thereof in favour of another person or persons the Grantor shall procure such other person or persons to enter into the following covenants which shall be expressed to be for the benefit of and enforceable by the Grantee or other the owner or owners for the time being of a legal estate in the blue land or any part thereof to the extent that such covenants may be enforced directly against such other person or persons aforesaid by the owner or owners for the time being of the blue land or any part thereof that is to say: (1) covenants in terms similar to the covenants contained in clause 4 hereof or as near thereto as the circumstances will permit or require and (2) a covenant in terms similar to the present covenant or as near thereto as the circumstances will permit or require And it is hereby declared that unless and until the Grantee shall comply with the terms of this further covenant he shall be and remain personally liable to perform and observe the covenants contained in clause 4 hereof

7. It is hereby agreed and declared as follows: —

Grantor's right to cut off supply.

(1) If at any time hereafter the Grantee shall fail or neglect to pay any sum covenanted to be paid by him by sub-clauses (1) and (2) of clause 3 hereof within twenty-one days of a notice in writing of such sum being due being served upon the Grantee in any such case and as often as the same shall happen it shall be lawful for the Grantor but without prejudice to any other remedy right or power available to him to cut off the supply of water to the blue land until the sum or sums specified in the notice and all other sums which shall have subsequently fallen due under the provisions hereof shall together with interest thereon at the rate of five per centum per annum from the date when the same fell due be paid to the person or persons entitled to the same under the provisions hereof Provided that upon payment of such sum or sums together with interest thereon at the rate aforesaid the said water supply to the blue land shall forthwith be restored

Grantee's right to pay water rate on Grantor's default.

(2) If at any time hereafter the Grantor shall fail or neglect to observe perform or fulfil the covenants on his part to pay or procure to be paid the rates charges and payments contained in sub-clauses (1) and (7) of clause 4 hereof in any such case and as often as the same shall happen then whether or not such failure shall constitute an actionable breach of covenant and without prejudice to any other remedy right or power available to the Grantee it shall be lawful for the Grantee to pay the same in the name and on behalf of the person or persons liable to pay the same and the amount so paid less the amount which the Grantee would ordinarily have been bound to pay under the provisions of clause 3 (1) hereof together with interest thereon from the date of such payment at the rate of five per centum per annum shall be a debt owed to the Grantee by the person or persons in default recoverable by action and in the meantime all such sums as shall remain outstanding and shall have become payable before the expiration of twenty-one years after the death of the last survivor of the descendants now living of His late Majesty King George the Fifth (which period is hereinafter referred to as "the perpetuity period") shall be charged upon the red land

Grantee's right to enter and repair etc. on Grantor's default.

(3) If at any time hereafter the Grantor shall fail to observe perform or fulfil the covenants on his part to repair and otherwise contained in sub-clauses (2) and (3) of clause 4 hereof in any such case and as often as the same shall happen then whether or not such failure or failures aforesaid shall constitute an actionable breach of covenant it shall be lawful for the Grantee with or without workmen or others but without prejudice to any other remedy right or power available to the Grantee in respect of such failure or failures and notwithstanding any actual or constructive waiver of any previous cause or right of entry or of any other right or claim on the part of the Grantee to enter and execute such works acts or things (if any) on the red land or other land of the Grantor as shall be necessary or proper for cleansing repairing or replacing the same or complying with the requirements of the Board as provided by the said covenants but as to any such works acts or things aforesaid (if any) as shall not fall within the provisions of section 162 of the Law of Property Act 1925 only during the perpetuity period And the amount of all sums of money properly expended by the Grantee in or about such works acts and things as aforesaid less that proportion thereof (if any) which under the provisions of clause 3 (2) hereof the Grantee would if the said works acts and things had been executed by the Grantor have been liable to contribute together with all costs and expenses occasioned by the exercise of this power and together with interest thereon and on the amount of such expenses from the date of incurring such expenditure at the rate of five per centum per annum shall be a debt owed to the Grantee by the person or persons in default recoverable by action and in the meantime all such sums as shall remain outstanding and shall have become payable before the expiration of the perpetuity period shall be charged upon the red land

Grantee's right to vary demand for water.

(4) The Grantee shall from time to time and at all times be entitled to alter discontinue restrict or extend the use of or demand for water on the blue land or any part thereof in his own absolute discretion Provided always that such alteration discontinuance restriction or extension shall be notified in writing to the Grantor and to the Board and shall be sanctioned

by the Board whether subject or not to any increase or decrease or other change in the water rate or charges payable in respect thereof and the provisions of this Deed shall apply subject to any such alteration discontinuance restriction or extension aforesaid

Definitions.

(5) Without prejudice to the operation of sections 78 and 79 of the Law of Property Act 1925 the expressions "the Grantor" and "the Grantee" shall where the context so admits be deemed to include his successors in title and the persons claiming through or under him

Notices.

(6) The provisions of section 196 of the Law of Property Act 1925 shall apply to the service of notices under the provisions of this Deed

Acknowledgment to produce.

8. The Grantor hereby acknowledges the right of the Grantee to production of the documents specified in the Second Schedule hereto and to delivery of copies thereof

Endorsement of grant.

9. A memorandum of this Deed of Grant shall be endorsed on —— [*principal title deed of the Grantor*]

Certificate of value.

10. IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £ [£500, £3,000 or £3,450]

THE FIRST SCHEDULE ABOVE REFERRED TO

Easement of water.

1. Full and free right to the uninterrupted passage and flow of water through all the water supply pipes situated on the red land or other land running from the water main of the Metropolitan Water Board to the blue land (1) as to such of the said pipes as serve the blue land in common with other land in common with the owners and occupiers of such other land and (2) as to such of the said pipes as serve only the blue land in severalty and exclusively

Right of entry.

2. Full right and liberty for the Grantee with servants workmen and others at all reasonable times on notice (except in the case of emergency) to enter into and upon the red land or any part thereof and take all such reasonable steps and

measures as may be necessary to test inspect cleanse repair maintain alter or replace such of the said water pipes or any of them as exclusively serve the blue land causing as little disturbance as possible and making good all damage caused

IN WITNESS etc.

THE SECOND SCHEDULE ABOVE REFERRED TO

(Documents acknowledged)

FORM 5

Form of Will (*a*) **Creating Wide** (*b*) **Discretionary Trusts** (*c*) **for Collateral Relatives in all Degrees; Trustees Empowered to Apply Capital and Income for Members of the Discretionary Class, to Make Appointments of the Trust Fund and to Terminate the Trust Period; Ancillary Provisions Relating to Payments to Third Parties, Identification of Beneficiaries and Hotchpot; Directions in Relation to Shares Held in a Private Company.**

(*Drafted by J. F. Turing, Solicitor*)

I, [ ] of [ ] in the County of [ ] Spinster HEREBY REVOKE all testamentary

(*a*) It has been assumed that the client is an elderly spinster of means who has outlived her own generation and is likely to be survived by many nephews and nieces and their issue. Finding it difficult to do justice to competing claims on her affection, she wishes to apply something in the nature of a "means test," *i.e.*, to cater for her relatives according to need—a not uncommon aspiration, but uncommonly difficult to satisfy. The difficulty of applying such a test tends to increase with the age of the client, the enlargement of the class of potential beneficiaries and fluctuations in the fortunes and responsibilities of individual members of it. The "means test" is not, admittedly, a satisfactory basis for testamentary dispositions, but so long as clients make wills there is likely to be a demand for this and other manifestations of the nebulous. The main purpose of this form is to delegate the problems of the testatrix, so far as permissible, to her trustees. It may be found useful when treating marked symptoms of "Codicil-fever." It may also be employed for other purposes, *e.g.*, where the client's estate is composed largely of shares in a

(*b*) (*c*) For footnotes (*b*) and (*c*) see p. 681.

dispositions heretofore made by me AND DECLARE this to be my last Will.

1. I APPOINT [name, address] and [name, address] (hereinafter called "my Trustees") to be the EXECUTORS AND TRUSTEES of this my Will AND I DECLARE that the expression "my Trustees" shall where the context so admits include the Trustees or Trustee for the time being of this my Will. Appointment of executors.

2. (Specific Bequest of personal chattels).

3. (Specific Bequest of certain shares in a private company).

4. (Pecuniary legacies).

5. I DEVISE AND BEQUEATH the residue of my real and personal estate including any property over which I may have a general power of appointment to my Trustees upon the administration trusts declared in Form 8 of Part 2 of the Statutory Will Forms 1925 (*d*) (which form shall be deemed to be incorporated in my Will) AND I DECLARE that my Trustees shall stand possessed of the said residue or so much thereof as shall not be required for giving effect to the said administration trusts (hereinafter called "my residuary fund") upon the trusts hereinafter declared concerning the same. Devise and bequest of residue on administration trusts.

6. IN the following clauses of this my Will:—

(1) SUBJECT to the provisions of sub-clause (3) of this Clause "the trust period" shall mean a period commencing with the Definitions.

private company and it is desired to keep the holding intact and to maintain the company's traditions as long as possible (see clause 12 of the Form).

(*b*) It must be assumed that the client is capable of comprehending the scheme in all its essentials, but even so she should be carefully advised of the wide character of the powers to be conferred on her trustees. The trusts, in effect, shift much of the burden (and odium!) of discrimination to the trustees. This makes it desirable that they should be consulted beforehand and asked to say whether they are willing to act. If the trust will stand it, an annuity to each trustee may not be out of place. Needless to say the trustees must be selected with care. It is not sufficient that they are professionally qualified or persons of business experience if they will spend half their time abroad or dispute between themselves.

(*c*) The death of a member of the discretionary class, leaving other members surviving in whose favour the discretion may be exercised, should give rise to no claim for estate duty as the law now stands. But this type of trust is vulnerable to future legislation; see, *e.g.*, Wheatcroft's *Taxation of Gifts and Settlements* (second edition), at p. 161.

(*d*) As to the use of this Form, see this contributor's note (*h*), *ante*, Vol. 16, at p. 508.

date of my death and terminating at the first of the following dates to occur namely:—

(a) the expiration of twenty-one years from the death of the last survivor of the issue living at the date of my death of the marriage of my late father X with my late mother Y née Z or

(b) such earlier date as my Trustees may in pursuance of the power hereinafter conferred upon them by deed declare to be the date of termination of the trust period

(2) SUBJECT to the provisions of sub-clause (3) of this Clause "the discretionary class" shall mean such issue of the said marriage of my parents as shall be in existence at any time during the trust period whether living at my death or born after my death

(3) THE term "issue" in the last two preceding sub-clauses shall not include my niece Q. [to whom I have bequeathed a legacy by Clause 4 of this my Will] (*e*) or any issue of hers and references to the trust period and to the discretionary class shall be read and construed accordingly

(4) REFERENCES to any deed or deeds of declaration or appointment to be executed by my Trustees shall be construed to mean any deed or deeds revocable or irrevocable executed within the trust period AND I DIRECT that upon the expiration of that period (whether by effluxion of time or by irrevocable declaration) any revocable deed not previously revoked by my Trustees shall become irrevocable.

Discretionary trusts for maintenance of a class.

7. (1) MY TRUSTEES shall during the trust period stand possessed of the income of my residuary fund UPON TRUST to pay or apply the same as my Trustees shall in their absolute discretion think fit to or for or towards the maintenance or personal support or otherwise for the benefit of all or such one or more exclusively of the others or other of the members for

(*e*) It would be unusual if there were not a Q. in the family! If she and her issue or any of them are to be excluded from membership of the class, this seems to be the appropriate place for the operation. The words appearing after "issue of hers" are important, for Q. or one of her issue might be the last survivor of the issue mentioned in clause 3 (1) (a) and there might then, in the absence of such a provision, be a hiatus in the trust.

the time being of the discretionary class and in such shares and proportions if more than one and in such manner as my Trustees shall in their absolute discretion think fit and so that any payment to or for any particular person or purpose shall continue only so long as my Trustees shall think proper

(2) IN the exercise of the foregoing trust and powers my Trustees may during the infancy of any person who is for the time being a member of the discretionary class instead of personally applying income for the benefit of that person pay the same to the parent or guardian of that person whose receipt shall be a good and sufficient discharge to my Trustees

(3) IN like manner during the disability of any person being a member of the discretionary class who is for the time being in the judgment of my Trustees by reason of physical or mental infirmity incapable of managing his or her own affairs my Trustees may instead of personally applying income for the benefit of that person pay the same to his or her committee or receiver or to the Matron or Superintendent or other appropriate official of any home or institution in which that person may reside or to any other person to or in whose charge or care he or she may have been committed or may happen to be and the receipt of any such committee or receiver or other official or person as aforesaid shall be a good and sufficient discharge to my Trustees (*f*)

(4) IT is my intention to place in the hands of my Trustees or some or one of them or to deposit with this my Will a notebook containing a memorandum or note of the issue of my late parents now living which is intended only for the information and guidance of my Trustees and shall not be incorporated in or form part of my Will or be proved therewith AND I DIRECT that my Trustees may (if they think fit) accept such memorandum or note as sufficient evidence that the persons mentioned in it are (or would if alive at the date of my death) be admissible as members of the discretionary class and that it shall not be incumbent upon my Trustees to require strict proof by production of marriage or birth certificates or Statutory Declarations

(*f*) This sub-clause is unconventional and, of course, optional. Practitioners will recognise the practical difficulty that it is intended to meet.

or otherwise of the admissibility of such persons as members of the discretionary class (but without prejudice to their right to call for such evidence if they require it) AND I FURTHER DIRECT that with respect to any persons omitted from the said memorandum or note or born after the date thereof or born after my death and claiming or appearing to be members of the discretionary class my Trustees may act upon such reasonable evidence as they may think fit without calling for strict proof of the admissibility of such persons as members of the same AND I FURTHER DIRECT that my Trustees shall not be bound to admit any person as a member of the discretionary class merely because he or she is mentioned in the said memorandum or note and that if any person mentioned therein cannot after reasonable inquiry be found my Trustees shall be entitled to administer my residuary fund upon the footing that such person died in my lifetime unless and until the contrary shall appear (*g*).

Payments of capital.

8. (1) NOTWITHSTANDING the trusts hereinbefore declared my Trustees shall (in addition to the statutory power of advancement so far as applicable) have power in their absolute discretion at any time or times during the trust period to raise any sum or sums out of the capital of my residuary fund and to withdraw the same from the settlement thereof constituted by this my Will and to pay or apply the same to or for the benefit of any one or more members of the discretionary class to the exclusion of the others or other of them and in such manner as my Trustees shall in their absolute discretion think fit

(2) UPON any such payment or transfer of capital being made to a member of the discretionary class in exercise of the aforesaid power of withdrawal the same shall belong absolutely to that member freed and discharged from all the trusts otherwise declared by this my Will in respect of my residuary fund

(3) UNLESS my Trustees shall otherwise direct no member of the discretionary class shall be entitled to any share of my

(*g*) This sub-clause may be of advantage when the class is likely to be large or members of it have emigrated or disappeared without trace. It will not always be necessary to ask the client to provide a note of her relatives. The sub-clause was prepared for a testatrix whose nephews and nieces and remoter issue numbered forty or more, with annual additions.

residuary fund under the trusts hereinafter declared concerning the same (whether under any appointment made by my Trustees or in default of such appointment) without first bringing into hotchpot (*h*) all or any sums paid or applied for his or her benefit in exercise of the statutory power of advancement or in exercise of the powers conferred upon my Trustees by this present Clause or in exercise of both such powers.

Ultimate trusts.

9. (1) FROM and after the determination of the trust period my Trustees shall hold my residuary fund or such part or parts thereof as shall not have been previously paid or applied in exercise of any statutory or express power reposed in my Trustees IN TRUST for all or such one or more member or members of the discretionary class exclusively of the others or other of them and if more than one in such shares as within the permitted limits of remoteness my Trustees shall by deed appoint and in default of and subject to any such appointment IN TRUST for all the members of the discretionary class who shall be living at the date of determination of the trust period in equal shares per capita.

(2) UNLESS my Trustees shall otherwise direct no member of the discretionary class shall be entitled to any share of my residuary fund under the trusts hereinbefore directed in default of appointment without first bringing into hotchpot (*h*) (in addition to any sums mentioned in sub-clause (3) of the last preceding clause) any sum or sums appointed to him or her under the power of appointment hereinbefore conferred upon my Trustees.

Additional powers of Trustees:

10. IN the execution of the trusts and powers of this my Will and generally in relation to all and any property or moneys for the time being held upon the trusts thereof my Trustees shall have the following additional powers that is to say:—

to permit a beneficiary to reside;

(1) POWER to permit any member of the discretionary class to occupy or reside in or upon any real or immovable property

(*h*) The purpose (and it is hoped, the effect) of these provisions is to ensure that the following are all brought into hotchpot: (a) statutory advances; (b) capital withdrawn and paid to a beneficiary under clause 8; (c) any share appointed under clause. 9. Other draftsmen may prefer to relegate these directions for hotchpot to a separate and composite clause.

for the time being held upon the trusts of this my Will rent free or otherwise and generally upon such terms as my Trustees shall in their absolute discretion think fit

to carry on business;

(2) POWER to carry on or to concur or unite with any other persons or person in carrying on any business which or a share or interest in which shall be vested in my Trustees

to purchase shares qualifying a beneficiary to act as a director;

(3) POWER at any times or time at the absolute discretion of my Trustees and with a view to qualifying any member of the discretionary class to act as a director of any company or companies whether public or private to invest trust moneys in the purchase of such shares therein as shall be necessary to qualify him or her to act as such director and to transfer the same to him or her upon such terms as to security repayment rate of interest and otherwise as my Trustees may think proper

to exercise wide powers in relation to investments;

(4) POWER to vote in such manner as my Trustees shall in their absolute discretion think fit and either in person or by proxy in respect of any shares stocks or other securities held by them upon the trusts of this my Will to propose assent to or concur in and to unite with any other persons or person in proposing assenting to or concurring in any reorganisation of or other arrangement concerning any company or corporation in the shares stocks debentures funds or other securities whereof or otherwise in the capital whereof any trust moneys are for the time being invested or any merger or consolidation of any such company or corporation with any other companies or company corporations or corporation to exchange such shares stocks debentures funds or other securities as aforesaid of any company or corporation for others issued by the same or any other company or corporation to pay out of trust moneys all such assessments subscriptions and other expenses as my Trustees may think expedient for the protection of their interests as holders thereof and generally to exercise as holders thereof all the same rights and powers in all respects as if they were beneficially entitled thereto

to determine certain questions;

(5) POWER to determine as my Trustees shall consider just whether any moneys shall be considered as capital or income and out of what part of the residuary fund and whether out of

capital or income any taxes expenses outgoings or losses shall or ought to be paid or borne (*i*)

(6) POWER to exercise and to decide whether or not to exercise all or any of the powers conferred by this or any other clause of my Will in the same manner at the same full and unfettered discretion and with the same freedom from responsibility in all respects as if my Trustees were absolutely and beneficially entitled to all the property of whatsoever kind for the time being subject to the trusts hereof

to exercise powers freely;

(7) POWER by deed or deeds to declare for the purposes of Clause 6 of this my Will a date to be the date of determination of the trust period in relation to the whole or any part or parts of my residuary fund.

to fix a date for purposes of clause 6.

11. MY TRUSTEES shall have the same uncontrolled and unfettered powers of investment of my residuary fund and also of any other part or parts of my estate for the time being in their hands or under their control as they would have if they were the absolute beneficial owners thereof including power to purchase freehold or leasehold property for occupation (*j*).

Power of investment.

12. (1) INCLUDED in my residuary fund will be a number of [ ] per cent. and [ ] per cent. Preference Shares and Ordinary Shares in [ ] & Co. Limited (*k*) (hereinafter called "the Company") and in extension of the powers expressly or by implication conferred upon my Trustees by the last preceding clause I empower them to sell the said shares or any of them to the Trustees for the time being of the Company's Provident Fund (if authorised to purchase them) or to any other person or persons or corporation (including any trustee for the time being of this my Will) at such price as my Trustees having regard to my wishes hereinafter expressed shall deem fair and reasonable

Power to sell certain shares in a specified manner.

(2) No such sale shall be impeached on the ground that it

(*i*) Included, for what it is worth, but provisions of this kind do not oust the jurisdiction of the court. See, *e.g.*, *Re Wynn's Will Trusts* [1952] 1 All E.R. 341.

(*j*) Or substitute investment clause to taste.

(*k*) This clause is really intended to meet a separate problem and is no more than an outline of what may be required. See last sentence of note (*a*), above.

is contrary to the wishes of any beneficiary or on the ground that the price obtained is less than might have been obtained from some other purchaser or on the ground that any trustee of this my Will is personally interested in the transaction as a Director of the Company or as a purchaser of the shares or in any other capacity

(3) I WISH my Trustees so far as possible to avoid placing any substantial part of my holding in the Company of the said shares in the open market and I ask them so far as possible to ensure that any shares not from time to time required to answer the continuing trusts of this my Will come into the beneficial or fiduciary ownership of persons (for preference members of my own family) having a genuine interest in the family business who may be expected to retain them unsold and it is with this object in view and not in order to promote the sale of the shares that I have conferred exceptionally wide powers in relation to the said shares upon my Trustees feeling confident that I can rely upon their judgment to do what is best in the interests of the Company and the beneficiaries under my Will

(4) THE foregoing provisions of this clause of my Will shall not apply to the specific bequests of Ordinary Shares in the Company contained in Clause 3 of my Will

(5) I DIRECT that so long as the said [ ] shall be an Executor or Trustee of this my Will he shall exercise on behalf of my Trustees the voting rights conferred by one half of any shares in the Company from time to time comprised in my residuary fund and that so long as the said [ ] shall be an Executor or Trustee of this my Will he shall exercise on behalf of my Trustees the voting rights conferred by the other half of the said shares

(6) THE sequence of the names of my Trustees in the register of shareholders of the Company shall be so ordered as to give effect in conjunction with the Company's Articles of Association to the directions contained in the last preceding sub-clause.

13. (Power to appoint trust corporation as trustee with power to charge) (*l*).

(*l*) Include if desired. But it is doubtful whether this type of trust would appeal to some trust corporations.

14. (Professional charging clause).

IN WITNESS, etc.

FORM 6

Agreement (Under Seal) for the Sale of a Dentist's Practice where the Purchase Money is to be Paid by Instalments.

(Drafted by Alan A. Spears, Barrister-at-Law)

AN AGREEMENT made the —— day of —— 19— BETWEEN AB of *etc.* (hereinafter called "the Vendor") of the one part and CD of *etc.* Dentist (hereinafter called "the Purchaser") of the other part — Parties.

WHEREAS the Vendor is absolutely entitled to the assets and properties following that is to say:— — Recitals: reciting ownership of:—

(1) The goodwill of the practice of a dentist now and for many years past carried on by him at the premises situate at and known as — (1) goodwill;

(2) The furniture fittings books instruments medical and surgical appliances drugs and other chattels now in and about the said premises and used in connection with the said practice an inventory whereof in duplicate has been signed by each of them the Vendor and Purchaser (hereinafter collectively referred to as "the Fittings"). — (2) furniture, fittings, equipment;

(3) The said premises for the residue of the term of —— Years from —— subject to the rent reserved by and to the Lessee's covenants and conditions contained in the Lease (hereinafter called "the Lease") dated the —— and made between —— of the one part and the Vendor of the other part — (3) residue of lease.

NOW IT IS HEREBY AGREED AND DECLARED as follows:— — Agreement:

1. THE Vendor shall sell and the Purchaser shall buy the several assets specified in paragraphs (1) to (3) inclusive of the recital hereof namely the said goodwill the fittings and the Lease at the price of £—— reducible in the events respectively hereinafter mentioned. — to sell;

to accept title to lease;

2. THE Vendor having supplied a copy of the Lease to the Purchaser and his title thereto having been investigated by his Solicitor such title is accepted and no objection or requisition shall be made in respect thereof.

for payment of purchase money by instalments.

3. THE said purchase price of £—— shall be paid by the Purchaser in manner following that is to say:—

(i) The Purchaser shall pay to the Vendor the sum of £—— (being a deposit in part payment of the said sum of £——) on the signing hereof

(ii) The Purchaser shall pay to the Vendor the sum of £—— (being the balance of the said sum of £——) by weekly instalments (hereinafter referred to as "the weekly instalments") in manner and in the amounts hereinafter mentioned.

(iii) The weekly instalments shall be payable on the Monday of each week and shall be in the sum of £—— each instalment provided always that while the Purchaser shall be entitled to pay and the Vendor shall accept such weekly instalments in excess of the said sum of £—— as the Purchaser shall determine any sum paid by the Purchaser as aforesaid in excess of the said sum of £—— shall be applied by the Vendor in reduction of the said balance of the sum of £—— but shall not be or be deemed to be a part payment in respect of any of the weekly instalments payable thereafter under the provisions hereof

(iv) If (but not otherwise) the Purchaser shall have paid to the Vendor under the provisions of sub-paragraph (iii) hereof the sum of £—— within the period of [ONE] YEAR from the date hereof then in such case the Vendor will accept the said sum of £—— paid as aforesaid in full satisfaction and by way of complete discharge of the Purchaser from the payment of the said balance of the sum of £—— hereinbefore provided for

(v) If (but not otherwise) the Purchaser shall have paid to the Vendor under the provisions of sub-paragraph (iii) hereof the sum of £—— within the period of [THREE] YEARS from the date hereof then in such case the Vendor will accept the said sum of £—— paid as aforesaid in full satisfaction and by way of complete discharge of the Purchaser from the payment of the said balance of the sum of £—— hereinbefore provided for.

Date of completion.

4. THE sale and purchase hereunder shall be treated as taking effect as from the —— and shall be completed upon the date (hereinafter called "the date of completion") upon which the Purchaser shall have paid or satisfied the payment of all the weekly instalments of the said balance of the sum of £—— pursuant to the provisions of Clause 3 hereof.

Provisions for completion.

5. ON the date of completion the Vendor shall:—

(i) Deliver to the Purchaser the fittings and all the books of account charts registers record cards card indexes relating to the said practice and the fittings and such books and documents shall become the property of the Purchaser

(ii) Execute or procure to be executed by all necessary parties a proper assignment to the Purchaser (to be prepared by and at the expense of the Purchaser) of the said premises comprised in and for the residue of the term demised by the Lease and for this purpose the Vendor shall obtain all necessary consents or licences from the Landlords

(iii) Execute in favour of the Purchaser a proper assurance or assignment of the goodwill of the said practice.

Licence to occupy premises.

6. (i) THE Vendor shall immediately after the signing hereof grant to the Purchaser a Licence forthwith to occupy the said premises and the Purchaser shall pay to the Vendor in respect of such Licence the weekly sum of £——. The said Licence shall be in a form prepared by the Vendor's Solicitors but at the expense of the Purchaser

(ii) Upon the grant aforesaid the Purchaser shall be let into and take possession of the said premises and the Fittings and he shall carry on and conduct the said practice to the best of his skill and ability and use his best endeavours to preserve the same and the goodwill thereof and shall keep full and true accounts of all attendances on patients consultations operations and other work done and of all payments and receipts in respect of the said practice until the date of completion or until this Agreement shall be rescinded (pursuant to the terms hereinafter set out) as the case may be

(iii) Pending the date of completion or the rescission of this Agreement (as the case may be) the Purchaser shall be responsible for and shall pay all outgoings debts and liabilities of the

said practice (other than the payment of rates and the rent reserved by and under the Lease) and shall be entitled to retain and shall retain for his absolute use and benefit all and any profits derived from or acquired by him in connection with the said practice

(iv) Pending the date of completion the Purchaser shall at his own expense repair replace and renew such part or parts of the Fittings as shall be required to be repaired replaced and renewed in order to keep the Fittings in good and efficient working order.

Provisions as to goodwill.

7. IN order to secure so far as practicable the full benefit of the said practice for the Purchaser the Vendor will:—

(a) Forthwith so far as practicable introduce the Purchaser to his said patients and generally at all times hereafter comply with the reasonable requirements of the Purchaser in that behalf

(b) Permit the Purchaser to carry on the said practice under the names or style hitherto used by the Vendor namely —— either alone or in conjunction with such other name or names as the Purchaser shall determine.

Default in payment of instalments.

8. (i) IF any of the weekly instalments shall not be paid within fourteen days after the day when the same becomes due and payable then the whole unpaid balance of the purchase money shall immediately become payable and the Vendor may enforce payment thereof forthwith

provisions for rescission.

(ii) In the event of the said balance of the unpaid purchase money not being paid in accordance with sub-clause (i) of this clause within three months of the expiration of the period of fourteen days therein mentioned or in the event of the Purchaser (without the previous written consent of the Vendor) failing during four consecutive weeks to carry on the said practice (unless prevented by illness or unavoidable accident) to the reasonable satisfaction of the Vendor the Vendor may at his option and without prejudice to any other remedy available to him give notice in writing to the Purchaser of his intention to rescind this Agreement and immediately upon service of such notice this Agreement shall be rescinded except as to Clause 9 hereof.

9. IF this Agreement shall be rescinded pursuant to the provisions hereinbefore contained the following provisions shall have effect that is to say:— Effect of rescission.

(i) The Purchaser shall forthwith give up possession of the said premises and the Fittings (including such renewals and replacements thereof theretofore made by the Purchaser pursuant to the provisions of Clause 6 (iv) hereof)

(ii) The said deposit of £—— and all other sums paid by the Purchaser to the Vendor (pursuant to Clause 3 hereof) up to the date of such rescission shall be forfeited by the Purchaser to the Vendor save that if the Purchaser shall have paid any weekly instalments in excess of Twenty Pounds each as permitted by Clause 3 (iii) hereof the Vendor shall refund to the Purchaser the amounts of such payments to the extent to which they respectively exceed Twenty Pounds

(iii) The Vendor shall be at liberty to purchase and the Purchaser shall sell all such additions which the Purchaser shall have made to the Fittings (other than the renewals or replacements hereinbefore agreed to be made by the Purchaser) as the Vendor may require at a price to be determined by a valuation thereof as at the date of the purchase in this sub-clause provided

(iv) The Purchaser shall not at any time within two years thereafter exercise or carry on or be directly or indirectly interested in exercising or carrying on upon his own account or in partnership with or as locum tenens or assistant to any other person the practice or profession of a dental surgeon at or within a radius of one mile from the said premises and shall not within the radius aforesaid or elsewhere during that period knowingly receive as a patient or attend or otherwise professionally advise or treat or act in any professional capacity for any person who shall have been attended by him as a patient at the said premises prior to the date of rescission of this Agreement

(v) An account shall be taken of all sums payable to either of the parties hereto and they shall be credited and debited (as the case may be) with the amounts to which they are entitled and for which they are liable under the provisions hereof and the ultimate balance payable to either party shall be paid by the other party forthwith.

Security for payment of instalments.

10. FOR the purpose of better ensuring and securing to the Vendor the payment to the Vendor of the balance remaining unpaid of the said purchase money the Purchaser shall upon the signing hereof charge to the Vendor the policy of assurance effected by the Purchaser on his own life with the —— Insurance Company Limited with the payment of the said balance such Charge to be prepared by the Vendor's Solicitors at the Purchaser's expense and to be in such form and to contain such covenants on the part of the Purchaser and provisions as Counsel or the Solicitors for the Vendor shall require.

Provisions on death of Purchaser.

11. In the event of the death of the Purchaser prior to the date of completion the following provisions shall become operative and take effect that is to say:—

(i) The Vendor by himself or his agent shall immediately upon the death of the Purchaser be entitled to and shall re-enter upon the said premises and shall for the time being carry on the said practice until the event hereinafter specified and subject to and upon the terms hereinafter mentioned

(ii) The Vendor shall by written notice in that behalf served within one month of the date upon which the personal representatives of the Purchaser are duly constituted require the said personal representatives within one month from the date of such service to complete the purchase

(iii) In the event of the moneys payable under and by virtue of the said policy of assurance being insufficient to pay or provide the balance of the purchase money remaining unpaid at the date of death of the Purchaser the said personal representatives shall (in addition to the said policy moneys) pay the deficit within three months of the date of service of the said notice

(iv) Subject to the completion of the purchase by the said personal representatives in accordance with the foregoing provisions hereof the Vendor shall thereupon vacate the said premises and shall account to the said personal representatives with regard to the profits of the practice acquired by or on behalf of the Vendor from the date of the death of the Purchaser until the date of completion provided always that the Vendor shall be entitled to retain for his own use and benefit out of the said profits a sum equal to £—— in respect of every week during

which the practice was carried on by or on behalf of the Vendor pursuant to sub-clause (i) hereof

(v) In the event of the said personal representatives being unable or otherwise failing to complete the purchase in accordance with the provisions of sub-clauses (ii) and (iii) hereof the Vendor shall be entitled to rescind this Agreement whereupon the provisions set out in clause 9 hereof shall be operative and take effect as if references therein to the Purchaser were (so far as the context admits) references to his personal representatives and the said clause 9 shall be read and construed accordingly.

Vendor to keep lease on foot pending completion.

12. PENDING the date of completion the Vendor shall pay the rent and observe the covenants on the part of the Lessee reserved by and contained in the Lease and shall not do or suffer to be done any act or thing which might cause the Lease to be forfeited or surrendered to the Lessors.

Reservation to Vendor of right to practise, and Vendor's restrictive covenant.

13. (i) THE Vendor shall be entitled after the date hereof to continue to carry on the practice of a dentist hitherto carried on by him at and from the premises situate at and known as —— in the County of —— or from such other premises to which the said practice in —— aforesaid may hereafter be transferred

(ii) The Vendor may on and after (but not before) the expiration of the period of Four Years from the date hereof (notwithstanding that the date of completion shall fall and occur during the said period) practise as a dental surgeon at and from premises situate anywhere in the area which lies to the north of —— in the County of ——

(iii) Subject to the provisions of sub-clauses (i) and (ii) of this clause the Vendor shall not for the period of Ten Years from the date hereof practise as a dental surgeon either on his own account or in partnership or as locum tenens for or assistant to any other person within One Mile from the said practice at —— —— aforesaid

(iv) If the Vendor shall in any way violate any of the provisions of sub-clause (iii) hereof he shall forthwith pay to the Purchaser (or his successors in title) the sum of One Hundred Pounds for every month or part of a month during which he shall violate or continue to violate any of the said provisions as

liquidated damages and not by way of penalty and without prejudice to the right of the Purchaser (or his successors in title) to obtain an injunction to restrain such violation.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

FORM 7

Registered Transfer of Lower Maisonette (Short Form).

(Drafted by W. G. H. Cook, Barrister-at-Law)

HER MAJESTY'S LAND REGISTRY
LAND REGISTRATION ACTS, 1925 and 1936

County: ——
Parish or Place: ——
Vendor's Title Number: ——
Property: ——
Title Number allotted to property transferred: ——

Date. —— day of —— 19—.

Consideration. 1. In consideration of £—— (the receipt whereof is hereby acknowledged) A B of *etc.* (hereinafter called "the Vendor") AS BENEFICIAL OWNER hereby transfers to C D of *etc.* (Hereinafter called "the Purchaser") the land coloured red yellow and blue on the accompanying plan TOGETHER WITH the maisonette erected on the said land coloured blue (hereinafter called "the

Parcels. lower maisonette") but excluding the maisonette situate above the lower maisonette hereinafter called "the upper maisonette") all which property hereby transferred is known as —— being part of the land comprised in the title above referred to SUBJECT TO the reservations and exceptions specified in the First Schedule hereto TOGETHER WITH the benefit of the easements and rights specified in the Second Schedule hereto AND SUBJECT ALSO to and with the benefit of the restrictive and other conditions specified in the Third Schedule hereto

2. The Vendor and the Purchaser hereby apply to the Registrar to enter on the Register such of the said reservations exceptions easements rights and conditions as are capable of registration. Application to Register.

3. IT IS HEREBY AGREED AND DECLARED that the Purchaser shall not become entitled to any right of light or air which would in any way restrict or interfere with the free user of the adjoining or neighbouring property of the Vendor for building or other purposes Declaration as to light and air.

4. THE VENDOR hereby indemnifies the Purchaser against all charges and assessments (if any) imposed by the local and other authorities in respect of the making up and completing the road and footpaths known as —— upon which the land hereby transferred abuts. Indemnity as to road charges.

5. It is hereby certified that the transaction effected by this Transfer does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds [£500, £3,000, £3,450]. Certificate of value.

THE FIRST SCHEDULE ABOVE REFERRED TO

(1) The free and uninterrupted passage and running of water and soil gas and electrical current from and to the upper maisonette and from and to all other maisonettes on the land comprised in the title above referred to through the sewers drains watercourses pipes cisterns gutters gas-pipes electric wires and meters which are now or may hereafter be in or under the lower maisonette

(2) The right of protection and support to the upper maisonette from the lower maisonette as the same is at present enjoyed

(3) The right of the owner and occupier of the upper maisonette and of all the other said maisonettes or any person duly authorised by such owner or occupier to enter upon the lower maisonette or any part thereof at all reasonable times upon giving reasonable notice in that behalf in connexion with the exercise of the rights herein mentioned provided that such owner or occupier shall make good all damage occasioned by such entry

(4) The right of the owner or occupier of the upper maisonette in common with the Purchaser and persons having the like right to the use of the pathway giving access to the lower maisonette and to the upper maisonette (which said pathway is coloured yellow on the said plan) the Purchaser and the owner or occupier of the upper maisonette contributing in equal shares to the maintenance and repair of the said pathway and of the entrance gate and posts belonging thereto and of the front garden wall.

THE SECOND SCHEDULE ABOVE REFERRED TO

(1) The right (in common with all the owners and occupiers of the other maisonettes on the Vendor's Estate comprised in the title above referred to) to use the roadway known as —— leading from —— to —— and the Purchaser shall not be liable to contribute towards the expense of maintaining and repairing the said roadway

(2) The right of protection to the lower maisonette from the upper maisonette as the same is at present enjoyed

(3) The right to call upon the owner or occupier of the upper maisonette to keep the roof and chimney stacks of the building in a proper state of repair and in connection therewith the right of the owner or occupier of the lower maisonette or any person duly authorised by such owner or occupier at all reasonable times upon giving reasonable notice in that behalf to enter upon the upper maisonette in order to inspect the said roof and chimney stacks *provided always* that the expense of maintaining the said roof and chimney stacks together with the gutters and rainwater down pipes shall be borne in equal proportions by the owners or occupiers of the upper maisonette and of the lower maisonette respectively

(4) The full and free right of the Purchaser to use all sewers drains and services under the other maisonettes and land comprised in the title above referred to and the right to enter upon such maisonettes and land for the purpose of inspecting repairing or maintaining the said sewers drains and services the Purchaser making good all damages occasioned thereby.

THE THIRD SCHEDULE ABOVE REFERRED TO

(1) No caravan or house on wheels shall be placed upon the land hereby transferred or any part thereof nor shall any temporary building or erection be placed or built thereon without the Vendor's consent in writing first obtained. No permanent building of any kind shall be erected on any part of the land hereby transferred unless the plans thereof shall have first been approved in writing by the Vendor's Surveyor whose fee for the approval of such plans shall be paid by the Purchaser

(2) The land hereby transferred shall be used for residential purposes only and no act deed or thing shall be done or permitted thereon which may be or grow to be an annoyance nuisance damage or disturbance to the Vendor or to the owner or occupier of any other portion of the land comprised in the title above referred to

(3) No cockerels or hens shall be kept upon any part of the property hereby transferred and no washing shall be hung out on any part thereof on Sundays unless it is so screened as not to be visible from the roadway or from any adjoining part of the land comprised in the title above referred to

(4) No hoarding shall be erected upon any part of the property hereby transferred nor shall any building erection fence walls or any part thereof be used as an advertising station or for advertising purposes of any description

(5) No sand gravel clay or chalk shall be removed or dug from the said property except for the purpose of laying drains or other services therein

(6) The Purchaser shall maintain along the side or sides of the property hereby transferred where the same are marked "T" within the boundary thereof on the said plan a fence or hedge of such a kind as may be approved in writing by the Vendor or his Surveyor

(7) Any damage done by the Purchaser (or his servants or agents) to any of the roads drives or footpaths situate on the land comprised in the title above referred to shall forthwith be made

good by the Purchaser at his own expense to the satisfaction of the Vendor's Surveyor.

(Executed by both Parties and attested)

FORM 8

Registered Transfer of Upper Maisonette (Short Form).

HER MAJESTY'S LAND REGISTRY
LAND REGISTRATION ACTS, 1925 and 1936

County: ——
Parish or Place: ——
Vendor's Title No.: ——
Property: ——
Title Number allotted to property transferred: ——

Date —— day of —— 19—.

Consideration. 1. In consideration of £—— (the receipt whereof is hereby acknowledged) A B of *etc.* (hereinafter called "the Vendor") AS BENEFICIAL OWNER hereby transfers to E F of *etc.* (hereinafter called "the Purchaser") the land coloured red on the accompanying plan TOGETHER WITH the maisonette (hereinafter called "the upper maisonette") erected above the maisonette erected on the land coloured blue on the said plan (hereinafter called "the lower maisonette") but excluding the said land coloured blue and the lower maisonette all which property hereby transferred is known as —— being part of the land comprised in the title above referred to SUBJECT TO the obligations specified in the First Schedule hereto TOGETHER WITH the benefit of the easements and rights specified in the Second Schedule hereto AND SUBJECT ALSO to and with the benefit of the restrictive and other conditions specified in the Third Schedule hereto

Parcels.

Application to Registrar. Declaration as to light and air. Indemnity as to road charges. Certificate of value.

2. [*Application to Registrar*]
3. [*Declaration as to light and air as above*]
4. [*Indemnity as above*]
5. [*Certificate of value*]

THE FIRST SCHEDULE ABOVE REFERRED TO

(1) The duty for the benefit of the owner or occupier of the lower maisonette to keep the roof and chimney stacks of the building in a proper state of repair and in connection therewith the duty to permit the owner or occupier of the lower maisonette or any person duly authorised by such owner or occupier at all reasonable times upon giving reasonable notice in that behalf to enter upon the upper maisonette in order to inspect the said roof and chimney stacks PROVIDED ALWAYS that the expense of maintaining the said roof and chimney stacks together with the gutters and rainwater down pipes shall be borne in equal proportions by the owners or occupiers of the upper maisonette and of the lower maisonette respectively

(2) The right of protection to the lower maisonette from the upper maisonette as the same is at present enjoyed.

THE SECOND SCHEDULE ABOVE REFERRED TO

(1) The full and free right of the Purchaser to use all sewers drains and services upon or under the lower maisonette and any other maisonette and land comprised in the title above referred to and the right of the Purchaser and all persons duly authorised by him to enter upon such maisonettes and land at all reasonable times for the purposes of inspecting repairing or maintaining the said sewers drains and services the Purchaser making good all damage occasioned thereby

(2) The right of protection and support to the upper maisonette from the lower maisonette as the same is at present enjoyed

(3) The right of the owner and occupier of the upper maisonette or any person duly authorised by such owner or occupier to enter upon the lower maisonette or the other maisonette aforesaid or any part thereof at all reasonable times upon giving reasonable notice in that behalf in connection with the exercise of the rights herein referred to provided that such owner or occupier shall make good all damage occasioned by such entry

(4) The right of the owner or occupier of the upper maisonette

in common with the person having the like right to the use of the pathway giving access to the lower maisonette and to the upper maisonette (which said pathway is coloured yellow on the said plan) the Purchaser and the owner or occupier of the lower maisonette contributing in equal shares to the maintenance and repair of the said pathway and of the entrance gate and posts belonging thereto and of the front garden wall

(5) The right (in common with all the owners and occupiers of the other maisonettes aforesaid) to use the roadway known as —— leading from —— to —— and the Purchaser shall not be liable to contribute towards the expense of maintaining and repairing the said roadway

THE THIRD SCHEDULE ABOVE REFERRED TO

[See preceding Form]

(Executed by both parties and attested)

FORM 9

Licence to Use Land Under Section 2 of the Agricultural Holdings Act 1948 for Grazing or Mowing During a Specified Period of the Year (*a*).

(*Drafted by J. F. Mackeson, Solicitor*)

THIS LICENCE is made the —— day of —— 19— BETWEEN A. B. of —— (hereinafter called "the Licensor") of the one part and C. D. of —— (hereinafter called "the Licensee") of the other part.

WHEREBY IT IS AGREED AS FOLLOWS:—

1. The Licensor hereby licences the Licensee to use ALL that parcel of land with the buildings erected thereon situate etc.

(*a*) Stamp duty. This agreement will probably attract Bond Covenant Duty on the total amount payable. This document is drafted as a licence rather than a tenancy agreement for the reasons stated in the article, p. 126, *ante*.

for the purpose of grazing or mowing for the period (*b*) from the —— day of —— until the —— day of —— upon the terms and conditions following.

2. The Licensee shall pay the Licensor the sum of £—— payable as to £—— part thereof on the —— day of —— and as to £—— being the balance of the said sum on the —— day of ——

3. The Licensee shall be entitled to the exclusive use (*c*) of the said premises for the purposes of this Licence provided that there shall be reserved and excepted unto the Licensor

(a) All timber and timberlike trees and saplings with the right to enter and cut the same doing as little damage as may be and paying fair compensation to the Licensee for any injury to the Licensee's rights hereunder.

(b) The exclusive right to all Game (*d*) (subject as hereinafter provided) and all Fish with full rights of entry to take the same save that the Licensee shall have the same rights to ground game as if he were an occupier of the land entitled to the rights of such an occupier under the Ground Game Acts, 1880 and 1906.

(c) The right for the Licensor and all persons having authority from him to enter and inspect the said premises.

4. The Licensee hereby agrees with the Licensor as follows

(*b*) The period must be a specified period of the year but can be as long as 364 days: see *Reid* v. *Dawson* [1955] 1 Q.B. 214.

(*c*) *Exclusive use.* It seems clear that a licence remains a licence and does not become a lease, merely because exclusive possession is given to the licensee: see *Cobb* v. *Lane* [1952] 1 All E.R. 1199. It is assumed that such a licensee has sufficient possession to sue third parties in trespass: this is the trend of recent authority. If doubt is felt a clause may be inserted to provide that the licensor shall lend his name to actions in trespass by the licensee on receiving a full and proper indemnity as to costs.

(*d*) It is assumed that usually the landowner will wish to reserve game. It seems that the licensee may well qualify as an occupier under the Ground Game Acts, 1880 and 1906. The rights over hares and rabbits (if there are any left) are given in the words of the Act to occupiers, while s. 1 (2) provides that a person shall not be deemed an occupier by reason of an occupation for the purpose of grazing or pasturing sheep cattle or horses for not more than nine months. If therefore the licence is for nine months or less, a special right will have to be given by the licence. It is thought that the clause in this licence as drafted will give the right to the licensee either way.

(a) To pay to the Licensor the said sum mentioned in clause 2 hereof at the times therein provided.

(b) Not to use the said land except for grazing or mowing and if the said land shall be mown to spread on the said land or on such part thereof as shall be mown a quantity of good farmyard manure (at a rate of not less than 20 tons to the acre) before the expiry of this Licence and not to allow the said land to be injured by excessive treading or pounding of stock and not to use any buildings on the said land except for purposes ancillary to the use of the said land for grazing or mowing and not to allow any unrung pigs or swine to pasture on the said land.

(c) Not to assign this Licence nor to give or grant any licence to any other person or persons for any use of the said land or any part thereof for any purpose whatsoever

(d) To keep the hedges properly trimmed and cut and the fences in good order and the ditches properly cleaned out.

(e) To deliver up the said premises to the Licensor at the end of this Licence.

5. The Licensor hereby agrees with the Licensee that this Licence shall be irrevocable for the period aforesaid provided however that if the Licensee shall fail to pay the said sums of money within 14 days of the times hereinbefore appointed for such payments or if he shall fail to observe and perform any of the agreements on his part herein contained then in any such case the Licensor may give written notice to the Licensee at his last known place of address determining this Licence whereupon this Licence shall immediately determine but without prejudice to the rights of either party arising out of any antecedent breach of this agreement provided always that the Licensee shall be entitled to a reasonable time for the removal of his stock or other effects from the said premises.

IN WITNESS, *etc.*

Form 10

Appointment by Personal Representatives by representation of a Testator of New Trustees of a Settlement created by his Will, the Trustees being Statutory Owners, and consequential Vesting Assent (*a*).

(*Drafted by E. H. Bodkin, of Lincoln's Inn*)

I—APPOINTMENT OF NEW TRUSTEES

THIS APPOINTMENT is made the —— day of —— 19— BETWEEN A. of etc. and B. of etc. (hereinafter called "the Appointors") of the one part and C. of etc. and D. of etc. (hereinafter called "the New Trustees") of the other part Parties.

WHEREAS:— Recitals:

(1) X late of —— in the County of —— (hereinafter called "the Testator") by his Will dated the —— day of —— 19— after appointing E. and F. to be the executors and trustees thereof devised to them all his real estate UPON TRUST to pay the rents profits and income thereof to his Wife G. during her life and after her death IN TRUST for all or any his children or child who being male attained the age of 21 years or being female attained that age or married under that age and if more than one in equal shares as tenants in common in fee simple And the said Will did not appoint any persons to be trustees for the purpose of the Settled Land Act 1925 and there are no will of testator;

(*a*) The personal representatives by representation of the testator will be the trustees of the Settlement under s. 30 (3) until other trustees are appointed and can retire and appoint new trustees in their place: *Re Dark* [1954] 1 All E.R. 681. This *semble* is also the case if they have completed the administration, and assented before 1926—see *per* Russell J. in Chambers, 62 L.J.News 436. There appears to be nothing to prevent them deferring a vesting assent until new trustees have been appointed: *Re Price* [1929] 2 Ch. 400. If the assent were made prior to the appointment, this would necessitate not only a Deed of Declaration Supplemental to it, but also another Vesting Deed consequent upon the change in the statutory ownership. It is assumed that no Settled Land Act Trustees were appointed by the will and that there are no such trustees under s. 30 (1). The Precedent will apply if the testator died before 1926, but if administration was completed before 1926, his personal representatives will make a Vesting Deed instead of a Vesting Assent.

During the minority of one of the children the trustees will be statutory owners: *Re Bird* [1927] 1 Ch. 210.

persons who would be trustees of the Settlement under s. 30 (1) of that Act

death and probate; (2) The Testator died on the —— day of —— 19— without having revoked or altered his said Will which was on the —— day of —— 19— duly proved by the said E. and F. in the —— Probate Registry

infancy of child; (3) The Testator had issue two children and no more viz. H. who has attained the age of 21 years and I. who is an infant of the age of —— years

death of wife; (4) The said G. predeceased the Testator

(5) The said E. died on the —— day of —— 19—

death of one trustee; death of survivor appointing Appointors his executors; (6) The said F. died on the —— day of —— 19— having by his Will dated the —— day of —— 19— appointed the Appointors to be the executors thereof who duly proved and registered the same in the —— Probate Registry on the —— day of —— 19—

no vesting instrument in favour of tenant for life; (7) No Vesting instrument has been executed for giving effect to the provisions of the Settled Land Act 1925

Sale of part of real estate (8) Portions of the Testator's real estate have been sold and the net proceeds are now represented by the capital money and investments mentioned in the Schedule hereto standing in the names of the Appointors

desire to appoint; (9) The Appointors are desirous of retiring from the trusts of the Settlement created by the said Will of the Testator and of appointing the New Trustees to be trustees thereof in the place of themselves the Appointors

vesting deed to be made; (10) It is intended that by a Vesting Assent bearing even date with but executed after this Appointment the Appointors shall assent to the vesting of the freehold properties of the Testator (other than such as have been sold) in the New Trustees upon the trusts of the Settlement created by his said Will

transfer of investments. (11) It is intended that the said investments and cash specified in the said Schedule hereto shall forthwith be transferred into the joint names or so as to be under the joint legal control of the New Trustees

Now this deed witnesseth as follows:—

Appointment. 1. In exercise of the power for this purpose conferred by the

statute in this behalf and of every or any other power them enabling in this behalf the Appointors hereby appoint the New Trustees to be trustees of the settlement created in relation to his real estate by the said Will of the Testator in the place of themselves the Appointors who hereby retire from the trusts thereof (*b*).

Limited vesting declaration.

2. THE requisite vesting declaration shall be implied herein but shall not extend to the legal estate in the said property intended to be comprised in the said Vesting Assent.

IN WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

[*This will contain the investments and cash representing capital money*]

II—VESTING ASSENT

Parties.

THIS VESTING ASSENT is made the —— day of —— 19— BETWEEN A. of etc. and B. of etc. (hereinafter called "the Grantors") of the one part and C. of etc. and D. of etc. (hereinafter called "the Trustees") of the other part

Recitals:

WHEREAS:—

will;

(1) X late of —— in the County of —— (hereinafter called "the Testator") died on the —— day of —— 19— having by his will dated the —— day of —— 19— appointed E. and F. to be the executors thereof who duly proved and registered the same in the —— Probate Registry on the —— day of —— 19—

death of one executor;

(2) The said E. died on the —— day of —— 19—

death of second appointing Grantors by his will.

(3) The said F. died on the —— day of —— 19— having by his Will dated the —— day of —— 19— appointed the

(*b*) If the personal representatives were also appointed trustees for the general purposes of the will, there appears to be no objection to their appointing the new trustees to be general trustees of the will in the place of the original personal representatives (provided administration has been completed) by the same deed. The will is a settlement made after 1925, and the Vesting Assent will be conclusive in favour of a purchaser as to the Trustees' title, and the appointment will not come on the title to the land.

Grantors to be his executors who duly proved and registered the same in the —— Probate Registry on the —— day of —— 19—

NOW IT IS HEREBY DECLARED as follows:—

Assent.

1. THE Grantors (who have not made any previous assent or conveyance in respect of any legal estate in the premises) AS THE PERSONAL REPRESENTATIVES of the Testator hereby assent to the vesting in the Trustees in fee simple as statutory owners of ALL AND SINGULAR the freehold properties specified in the Schedule hereto.

Declaration of trust.

2. THE Trustees shall stand possessed of all the said freehold properties upon the trusts and subject to the powers and provisions upon and subject to which under the Settlement created by the said Will or otherwise the same ought to be held from time to time.

Trustees of Settlement.

3. THE Trustees are the trustees of the Settlement for the purposes of the Settled Land Act 1925.

Power to appoint new trustees.

4. No person is nominated by the said Will for the purpose of appointing new trustees of the Settlement and the statutory power of appointing new trustees is accordingly vested in the Trustees.

AS WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

[*Freehold Properties*]

Form 11

Appointment of New Trustees of a settlement created by the Will of a Testator dying after 1925 where the Trustees are statutory owners, Deed of Declaration and Vesting Deed, where there has already been a Vesting Instrument (*a*).

(*Drafted by E. H. Bodkin, of Lincoln's Inn*)

I—APPOINTMENT OF NEW TRUSTEES

THIS APPOINTMENT is made the —— day of —— 19— BETWEEN A. of etc. and B. of etc. (hereinafter called "the Appointors") of the one part and C. of etc. and D. of etc. (hereinafter called "the New Trustees") of the other part — Parties.

WHEREAS:— — Recitals:

(1) X late of —— in the County of —— (hereinafter called "the Testator") by his Will dated the —— day of —— 19— after appointing E. and F. to be executors and trustees thereof devised to them his freehold house No. —— —— Street —— in the County of —— IN TRUST for his son G. in fee simple And thereby appointed the Appointors to be trustees for the purposes of the Settled Land Act 1925 — will;

(2) The Testator died on the —— day of —— 19— without having revoked or altered his said will which was on the —— day of —— 19— duly proved and registered by the said E. and F. in the —— Probate Registry — death and probate;

(3) The said G. is an infant — infancy;

(*a*) A Vesting Deed is necessary in addition to the Deed of Declaration to show that the new trustees still remain Statutory Owners—see Wolstenholme and Cherry's *Conveyancing Statutes*, 12th ed., p. 955. The Vesting Deed will be conclusive evidence of the new trustees' title in favour of a purchaser under s. 110 of the Settled Land Act, 1925, and the Appointment will not come on the title. A memorandum of the names of the new trustees must be endorsed on the Vesting Assent.

The Precedent will be applicable if the settled land is held in trust for an infant: Settled Land Act, 1925, s. 26. If the executors are also appointed trustees of the settlement by the will, they will have assented in favour of themselves as statutory owners.

Usually, unless the original trustees wish to retire, it is better to defer any vesting instrument until the infant attains 21.

Vesting Assent;

(4) By a Vesting Assent dated the —— day of —— 19— and made between the said E. and F. of the one part and the Appointors of the other part the said E. and F. assented to the vesting in the Appointors as statutory owners of the said freehold premises and it was declared that the Appointors were the trustees of the settlement created by the said Will of the Testator in relation thereto for the purposes of the Settled Land Act 1925

desire to appoint.

(5) The Appointors are desirous of retiring from the trusts of the Settlement created by the said Will and of appointing the New Trustees to be trustees thereof in the place of themselves the Appointors

NOW THIS DEED WITNESSETH as follows:—

1. IN exercise of the power for this purpose conferred by the statute in that behalf and of every and any other power them enabling in this behalf the Appointors hereby appoint the New Trustees to be trustees of the Settlement created by the said Will of the Testator in relation to the said freehold premises in the place of themselves the Appointors who hereby retire from the trust.

2. THE requisite declaration shall be implied herein but shall not extend to the legal estate in the said freehold premises intended to be comprised in a Vesting Deed bearing even date with but executed after these presents.

IN WITNESS, *etc.*

II—DEED OF DECLARATION

Parties.

THIS DEED OF DECLARATION is made the —— day of —— 19— BETWEEN A. of etc. and B. of etc. (hereinafter called "the Old Trustees") of the one part and C. of etc. and D. of etc. (hereinafter called "the New Trustees") of the other part (*a*)

Recital of Vesting Assent.

WHEREAS This Deed is supplemental to a Vesting Assent dated the —— day of —— 19— and made between E. and F.

(*a*) If the power to appoint new trustees is vested in some person other than the old trustees, he must be made a party: Settled Land Act, 1925, s. 35 (2).

of the one part and the Old Trustees of the other part whereby the said E. and F. as personal representatives of X deceased assented to the vesting of the freehold property therein specified in the Old Trustees upon the trusts of the settlement created in relation thereto by the said Will of X

Now for giving effect to the requirements of the Settled Land Act 1925 THIS DEED WITNESSETH and it is hereby declared that the New Trustees are the trustees of the said settlement for the purposes of the Settled Land Act 1925

IN WITNESS, *etc.*

III—VESTING DEED

THIS VESTING DEED is made the —— day of —— 19— BETWEEN A. of etc. and B. of etc. (hereinafter called "the Old Trustees") of the one part and C. of etc. and D. of etc. (hereinafter called "the New Trustees") of the other part — Parties.

WHEREAS:— — Recitals:

(1) By a Vesting Assent dated the —— day of —— 19— and made between E. and F. of the one part and the Old Trustees of the other part the said E. and F. as the personal representatives of X deceased late of —— in the County of —— (hereinafter called "the Testator") who died on the —— day of —— 19— and probate of whose will dated the —— day of —— 19— was on the —— day of —— 19— granted by the Principal Probate registry to the said E. and F. assented to the vesting in the Old Trustees as statutory owners of the freehold property therein specified And it was declared that the Old Trustees were the trustees of the Settlement created by the said Will in relation to the same property for the purpose of the Settled Land Act 1925 — Vesting Assent;

(2) The New Trustees have become entitled to have the said freehold property vested in them as statutory owners upon the trusts hereinafter mentioned — title of New Trustees.

NOW THIS DEED WITNESSETH as follows:—

1. THE Old Trustees AS TRUSTEES HEREBY convey unto the New Trustees All and singular the said property specified in — Conveyance.

the Schedule to the recited Vesting Assent TO HOLD unto the New Trustees in fee simple.

2. THE New Trustees shall stand possessed of the said property hereby conveyed upon the trusts declared concerning the same by the said Will of the Testator or upon such other trusts as the same ought to be held from time to time (*a*).

Trustees of Settlement.

3. THE New Trustees are the trustees of the Settlement for the purposes of the Settled Land Act 1925.

Additional powers.

4. THE following additional or larger powers are conferred by the said Will and by virtue of the Settled Land Act 1925 operate and are exercisable as if conferred by that Act on the statutory owners viz. ——

Power to appoint trustees.

5. No person is nominated by the said Will for the purpose of appointing new trustees thereof and the statutory power of appointing new trustees of the Settlement created by such Will is accordingly vested in the New Trustees.

IN WITNESS, *etc.*

(*a*) If parts of the property have been sold since the date of the Vesting Assent, this should be referred to generally in the recitals and the property remaining unsold described in a Schedule. The same applies where any property has been acquired by subsidiary vesting deed.

Form 12

Surrender of Life Interest in Personalty to enable the Funds to be transferred to the Remainderman. Provision for retainer of a fund to answer estate duty (*a*).

(*Drafted by E. H. Bodkin, of Lincoln's Inn*)

THIS SURRENDER is made the —— day of —— 19— BETWEEN A. of etc. (hereinafter called "the Tenant for Life") of the first part B. of etc. (hereinafter called "the Remainderman") of the second part and C. of etc. and D. of etc. (hereinafter called "the Trustees") of the third part Parties.

WHEREAS:— Recitals:

(1) X late of —— in the County of —— (hereinafter called "the Testator") by his will dated the —— day of —— 19— after appointing the Trustees to be the executors and trustees thereof and bequeathing certain pecuniary legacies devised and bequeathed all his real estate and the residue of his personal estate to the Trustees UPON TRUST to sell and convert the same as therein mentioned and to pay thereout his funeral and testamentary expenses and debts and the legacies thereby or by any codicil thereto bequeathed and to invest the balance as will of Testator;

(*a*) The trustees will remain liable for the estate duty chargeable if the tenant for life dies within 5 years of the surrender. The amount of the prospective claim is uncertain, as the rate of duty will depend on the property of the tenant for life with which the fund is aggregable on his death. Under s. 44 of the Finance Act, 1950, however, they can obtain a Certificate of the amount which in the opinion of the Commissioners may properly be treated as the prospective amount of the duty. The trustees will then only be accountable for the amount specified in the Certificate. Information as to the tenant for life's financial position and his dutiable property will be required. The investments retained should be sufficient to cover possible depreciation, as the trustees will be liable for the excess if these investments when realised do not produce sufficient to cover the duty. If, however, Government securities or investments authorised for the investment of trust funds are retained they will not in practice be held accountable for depreciation. After the 5 years have elapsed, they can obtain from the Commissioners an assurance that no duty will be payable, on affirming that the tenant for life has been entirely excluded from possession and enjoyment of property and from any benefit referable to the surrender, and that no operations are in view whereby he might obtain such possession, enjoyment or benefit.

therein mentioned and hold the net proceeds of sale and conversion and the investments for the time being representing the same UPON TRUST to pay the income thereof to the Tenant for Life during his life and after his death as to both capital and income IN TRUST for all or any his (the Testator's) children or child who being male attained the age of 21 years or being female attained that age or married under that age and if more than one in equal shares

death and probate;

(2) The Testator died on the —— day of —— 19— without having revoked or altered his said Will which was on the —— day of —— 19— duly proved and registered by the Trustees as the executors therein named in the —— Probate Registry

family;

(3) The Testator had issue two children and no more viz. the Remainderman and C. and had no legally adopted children

death of one child;

(4) The said C. died an infant on the —— day of —— 19—

administration;

(5) Shortly after the death of the Testator the Trustees sold his real estate and converted part of his personal estate and out of the net proceeds of sale and his ready money paid his funeral and testamentary expenses and debts and the duties payable on his death and paid the legacies bequeathed by his said will and the net residuary estate of the Testator remaining after the payments aforesaid (hereinafter called "the residuary estate") is now represented by the investments specified in the Schedule hereto

desire to surrender.

(6) The Tenant for Life is desirous of surrendering to the Remainderman his life estate in the residuary estate

application for Certificate of estate duty.

(7) It is intended that the Trustees shall apply to the Commissioners of Inland Revenue for a Certificate of the amount which in their opinion may properly be treated as the prospective amount of the estate duty payable in respect of the residuary estate in the event of the death of the Tenant for Life within 5 years of the date hereof for which purpose it has been agreed that the Tenant for Life shall furnish the Trustees with the necessary information

NOW THIS DEED WITNESSETH as follows:—

Surrender.

1. THE Tenant for Life hereby surrenders and assigns unto the Remainderman ALL THAT his life interest under the said

Will in the said investments and cash specified in the said Schedule hereto [and all other (if any) the property now representing the residuary estate of the Testator] to the end and intent that the same may forthwith merge in the reversionary interest therein

Authority to retain investments to cover duty.

2. THE Tenant for Life and the Remainderman hereby authorise the Trustees to retain such of the said investments specified in the said Schedule hereto or any part or parts thereof respectively the value whereof at the mesne market price at the date hereof shall [be equal to the sum specified in the said Certificate of the Commissioners] [in the opinion of the Trustees be sufficient (allowing for possible depreciation in the value thereof) to provide on the death of the Tenant for Life for the sum specified in the said Certificate]

Application of investments.

3. THE income of the said investments hereinbefore authorised to be retained shall be paid to the Remainderman his personal representatives or assigns and such investments or so much thereof as shall not be required to provide for the estate duty payable in respect of the Trust Fund on the death of the Tenant for Life shall upon the Trustees being satisfied by the final assessment of the duty or (if the Tenant for Life shall survive for 5 years by the assurance of the Commissioners or otherwise that they are not so required) be transferred to the Remainderman for his own benefit absolutely

Covenant of indemnity against duty.

4. THE Remainderman hereby covenants with the Trustees their and each of their personal representatives that he or his personal representatives will indemnify the Trustees and the Trustees for the time being of the said Will and each of them and their respective personal representatives against their liability for the payment of any estate duty which may be payable in respect of the Trust Fund on the death of the Tenant for Life if and to the extent that the said investments so retained shall be insufficient when realised to provide for the same and against all actions proceedings costs charges claims and demands in respect of the excess of such duty over and above the said value of the said investments (*b*)

(*b*) This covenant will only be required if the investments retained are not Government securities or authorised trust investments.

Release to Trustees.

5. THE Tenant for Life and the Remainderman according to their respective interests hereby release the Trustees and each of them and their respective personal representatives from all actions proceedings costs charges claims and demands in respect of the said investments specified in the said schedule hereto or other the residuary estate of the Testator and in respect of any sale investment transposition of investments payment or other dealing or any thing done or omitted by the Trustees or either of them in the administration of the Testator's estate or the execution of the trusts of his residuary estate or otherwise relating to the premises PROVIDED THAT such release shall not extend to the said investments so retained by the Trustees as aforesaid and as to the balance of the said investments specified in the said Schedule hereto (which it is intended shall be transferred to the Remainderman) shall not take effect until the same are duly transferred (*c*)

IN WITNESS, *etc.*

(*c*) If the investments are to be sold, the surrender will recite an agreement to this effect, and provide for retention of the sum mentioned in the Certificate in cash, and that it shall be invested in trustee investments. The Release should in this case, if it is intended to cover the whole transaction, be made by a separate document reciting the sale and payment of the proceeds (less the sum retained) to the Remainderman.

Form 13

Agreement for the sale of a factory and adjoining bungalow together with the "know-how" of certain manufacturing processes with provisions for the payment by the Purchaser of an annuity and royalty and the continued employment of the manager of the business.

(Drafted by C. R. D. Richmount, of Lincoln's Inn)

AN AGREEMENT made the —— day of —— 19— BETWEEN AB of ——in the County of —— (hereinafter called "the Vendor") of the first part CD of —— in the County of —— (hereinafter called "the Manager") of the second part and EF Limited whose registered office is situate at —— in the County of —— (hereinafter called "the Purchaser") of the third part Parties.

WHEREBY it is agreed as follows:—

1. The Vendor and the Manager shall sell and the Purchaser shall purchase the following property and assets that is to say Agreement for sale:

(1) the property respectively described in the respective first parts of the First and Second Schedules hereto and for the purpose of identification only delineated on the plan annexed hereto and thereon coloured pink and green (all of which property is hereinafter called "the said property") for an estate in fee simple absolute in possession free from all incumbrances other than and except as respectively mentioned in the respective second parts of the said Schedules of property,

(2) the plant fittings and equipment situated on or in the said property as more specifically set forth and enumerated in the inventory annexed hereto and signed by the Vendor and by Mr. —— on behalf of the Purchaser of plant, etc.,

(3) the goodwill of the business now carried on by the Manager on the said property under the style of "The XY Company" including the right (so far as the Manager can lawfully grant the same) to use the trade name and symbol of "XY" of goodwill,

(4) the formulae and processes now in use by the Manager for the manufacture of cement waterproofer in both powder of know-how,

and liquid forms and known as and marketed under the description XY Cement Waterproofer

of stock-in-trade. (5) the stock-in-trade consisting of raw materials finished goods containers stationery and other goods and chattels capable of passing by delivery which on the date fixed for completion of the purchase herein shall be in or upon the said property and belong to the Manager and the Vendor or either of them in respect of the said business

Purchase price: 2. The purchase price of the said property goodwill and assets hereby agreed to be sold shall be as follows:—

for property goodwill and assets; (1) for the property goodwill and assets set forth or referred to in paragraphs (1) (2) (3) and (4) of clause 1 of this agreement the Purchaser shall pay to the Vendor in respect of all such property goodwill and assets

capital sum, (a) the sum of £— and

annuity, (b) an annual sum of £— to be paid during the lifetime of the Vendor or for a period of ten years (whichever shall be the longer) on the first and successive anniversaries of the date fixed for completion of the purchase herein (which annual sum is hereinafter called "the annuity") and

royalty, (c) a royalty of £— for every ton of cement waterproofer in powder form which the Purchaser shall sell in excess of ——tons in any one year (calculated from the said date fixed for completion) such royalty to be paid on the first and successive anniversaries of the said date Provided that the total royalty payable under this provision shall not exceed the sum of £— in any one year (the sum payable hereunder is hereinafter called "the royalty")

for stock-in-trade. (2) for the stock-in-trade referred to in paragraph (5) of clause 1 hereof the Purchaser shall pay to the Vendor a sum to be calculated as follows:—

(a) for every ton of finished cement waterproofer in powder form the sum of £— inclusive of packing

(b) for every gallon of finished cement waterproofer in liquid form the sum of £— exclusive of packing

(c) for all other the said stock-in-trade a sum equal to the aggregate invoice cost thereof

Declaration for stamp duty purposes.

3. It is hereby declared by the parties hereto that the consideration set forth in paragraph (1) of clause 2 hereof was agreed between them on the basis that the value of the said property (described or referred to in paragraph (1) of clause 1 hereof) together with the plant fittings and equipment referred to in paragraph (2) of clause 1 hereof is the sum of £—— and the value of the goodwill referred to in paragraph (3) of clause 1 hereof is the sum of £——.

Payment of deposit.

4. The Purchaser shall immediately after the signing of this agreement pay to Messrs. —— of —— in the County of —— the Vendor's solicitors as stakeholders the sum of £—— as a deposit and in part payment of the said sum of £—— and shall on the —— day of —— 19— pay the balance of the said sum of £—— together with all such other sums as are payable hereunder in cash (excluding the annuity and the royalty) at the said offices of Messrs. —— at which time and place the purchase shall be completed.

Conditions of sale:

5. The following terms and conditions shall apply to the sale and transfer of the said property that is to say

commencement of title,

(1) The title of the property described in the First Schedule hereto shall commence with a Conveyance on sale dated the —— day of —— 19— and made between

nature of title,

(2) The Manager holds the legal estate in the property described in the First Schedule hereto upon the trusts declared by a Declaration of Trust dated the —— day of —— 19— and made between the Manager of the one part and the Vendor of the other part whereby it was declared (*inter alia*) that the Manager held such property upon trust to convey the same to such person or persons as the Vendor should direct or appoint and the Manager will convey such part of the said property as such trustee as aforesaid the Vendor joining in the conveyance and being expressed to convey the same as beneficial owner

(3) The title to the property described in the Second Schedule hereto shall commence with a Conveyance on sale dated the —— day of —— 19— and made between

(4) The Vendor sells and will convey the property described in the Second Schedule hereto as beneficial owner *or*

[(4) Neither the Vendor nor the Manager is the legal owner of the property described in the Second Schedule hereto but the Vendor has an interest therein as Purchaser under a contract dated the —— day of —— 19— and made between —— of the one part and the Vendor of the other part and the Purchaser will take a conveyance of this part of the said property executed by the said —— the Vendor joining in and confirming such conveyance]

restrictions,

(5) The property described in the First Schedule hereto is sold and will be conveyed subject to [certain covenants restrictive of the user thereof or otherwise contained in a Conveyance dated the —— day of —— 19— and made between ——] and the property described in the Second Schedule hereto is sold and will be conveyed subject to [*etc.*]

Town and country planning.

(6) All the said property is sold and will be conveyed subject to all regulations orders and by-laws (if any) which may have been passed or made by any local or other authority or public body and may affect the property or a part thereof and to all orders and restrictions affecting the same imposed by or under any Town and Country Planning Act or by any planning authority acting in pursuance of the terms of any such Act and the Purchaser shall be deemed to buy with full notice in all respects of the existing use of the property and shall assume without objection or requisition that such use is the permitted use for the purposes of the Town and Country Planning Acts 1947–1954 and subsequent amending legislation

National Conditions of sale.

(7) The conditions of sale known as the National Conditions of Sale Sixteenth Edition shall apply so far as the same are applicable to a sale by private contract but so that in case of any variance or inconsistency between the conditions expressed herein and the said National Conditions the former shall prevail over the latter and Condition 13 of the said National Conditions shall not have effect

Security for annuity and royalty.

6. As security for the payment by the Purchaser to the Vendor of the annuity and the royalty the Purchaser shall on completion of the purchase deliver to the Vendor an instrument under seal executed by the Purchaser and Messieurs —— of

—— and —— of —— [*sureties to be approved by the Vendor*] whereby in consideration of the conveyance and transfer of the said property goodwill and assets hereby agreed to be sold to the Purchaser the Purchaser shall covenant for the payment of the annuity and the royalty and the said [*sureties*] shall guarantee to the Vendor the payment of the annuity and the royalty. The said instrument under seal shall contain clauses providing for the following:—

(i) The delivery to the Vendor or as he shall direct of accounts therein showing the amount of the royalty payable by the Purchaser

(ii) A covenant by the Purchaser to keep proper books of account and to record in such books of account particulars of all waterproofer sold by the Purchaser or by any agent of the Purchaser and to allow the Vendor or any person authorised by him at all reasonable times to inspect such books of account and to copy and take extracts therefrom

(iii) A covenant by the Purchaser to manufacture and to use its best endeavours to promote the sale of such waterproofer

(iv) A covenant by the Purchaser not so long as this royalty shall be payable without the consent in writing of the Vendor in that behalf to authorise or in any way to permit the manufacture and/or sale of waterproofer otherwise than by the Purchaser or by agents of the Purchaser on the Purchaser's behalf

(v) A covenant by the Purchaser not to sell or assign the formulae relating to the process or manufacture of waterproofer and not to grant to any person any licence to manufacture waterproofer during the life of the Vendor or the period of ten years from the date of such instrument under seal whichever shall be the longer period

Insurance.

7. Pending completion of the purchase all the property hereby agreed to be sold shall be at the risk of the Purchaser as to loss or damage by fire accident or otherwise but subject to the consent of the insurance office and payment by the Purchaser on completion of a proportionate part of the premium for the unexpired term of the existing policy the Manager and the Vendor will hold such policy in trust for the Purchaser but

neither the Manager nor the Vendor shall be bound to keep up or renew the insurance of the whole or any part or parts of such property.

Continuance of business pending completion.

8. The said business as now carried on by the Manager for and on behalf of the Vendor shall be continued and carried on by the Manager for the exclusive benefit of the Vendor and (subject as aforesaid) at the Vendor's risk and cost until the date fixed for completion of the purchase and as from that date down to the date of actual completion for the benefit and at the sole risk and cost in all respects (including the Manager's salary as hereinafter provided) of the Purchaser.

Ditto.

9. In carrying on the said business in accordance with the provisions therein contained the Manager shall continue to conduct the same under the trade name of XY Company as heretofore and shall in every way maintain such trade name and upon completion of the purchase the Manager and the Vendor shall if so required by the Purchaser and at the Purchaser's expense assign to the Purchaser the right to use such trade name and the Purchaser shall after such completion have the sole right to conduct the said business under the said trade name of XY Company upon taking such steps as may be required by law to entitle the Purchaser to conduct the business under the said trade name.

Apportionments.

10. All profits in respect of the said business and property up to the date fixed for completion herein (except profits in respect of any stock then already sold and paid for but not removed the purchase-money for which shall be allowed for in the valuation of stock to be made as aforesaid) and all outgoings in respect thereof up to the same date (including ascertained liabilities then previously incurred in respect of the said business but not discharged) shall belong to or be discharged by the Manager and the Vendor as the case may be and from the date fixed for completion all outgoings and losses (including all liabilities and outgoings arising out of any uncompleted contracts or engagements and all future claims in respect of completed contracts or engagements) shall be discharged by and the rents and profits (including the receipts from the said

business) shall belong to the Purchaser and the outgoings in respect of the said property shall (if necessary) be apportioned for the purpose of this provision.

Interest on purchase money.

11. If from any cause whatever other than the wilful default of the Manager or the Vendor the purchase shall not be completed on or before the date fixed for completion the Purchaser shall pay to the Vendor interest on the balance of the said sum of £—— and on all other sums forming part of the purchase price which are payable in cash on the said date at the rate of £5½ per cent. per annum from that date until the actual completion of the purchase and shall not be entitled to any compensation for any delay on the part of the Manager or the Vendor but this stipulation is without prejudice to the rights of the Manager or the Vendor under any other provision herein expressed or referred to.

Control pending completion.

12. Until actual completion of the purchase the Manager and the Vendor shall retain actual possession of the said property and the right to control the conduct and management of the said business as aforesaid but without prejudice to the provisions as to the appropriation of profits and liability for outgoings and losses hereinbefore contained.

Completion of transactions.

13. On payment of the balance of the sum of £—— agreed to be paid by the Purchaser to the Vendor together with the amount payable by the Purchaser under paragraph (3) of clause 2 hereof and on delivery to the Vendor of the instruments referred to in clause 6 of this Agreement and to the Manager of the tenancy agreement hereinafter in clause 20 referred to the Purchaser shall be entitled to proper assurances or transfers of the whole or any part or parts of the property hereby agreed to be sold from the Manager and the Vendor such assurances or transfers to be prepared by and at the expense of the Purchaser.

Warranties.

14. The Manager and the Vendor respectively represent and warrant as follows:

(1) that the Manager is the owner of and with the consent of the Vendor has a good and marketable title to all the chattel assets set forth or referred to in this

Agreement and subject as aforesaid has a good right to convey the same free from all incumbrances

(2) that the present cost of manufacture of cement waterproofer in accordance with the methods and in the quantities as it has heretofore been manufactured by the Manager on the said property is as follows:

(a) in powder form a cost not exceeding £—— per ton exclusive of packing and labour

(b) in liquid form a cost not exceeding —— per gallon exclusive of packing and labour

Assignment of "know-how."

15. The Manager and the Vendor shall assign and transfer to the Purchaser the formulae or process of manufacture of the said cement waterproofer in both liquid and powder forms and for that purpose shall prepare and on the date of actual completion of the purchase deliver to the Purchaser a full and complete description in writing of the said process and the manner of its use including therein all particulars and instructions that will be sufficient and necessary to enable workmen employed by the Purchaser to manufacture such cement waterproofer in accordance with the said process and shall on the date aforesaid deliver such description so prepared to the Purchaser.

Agreement not to divulge "know-how."

16. Neither the Manager nor the Vendor shall in any manner make known divulge or communicate the said process to any person or corporation other than the Purchaser.

Agreement not to compete.

17. The Manager and the Vendor hereby respectively agree that they and each of them shall not either individually or in combination at any time during the period of 10 years from and after the date of actual completion of the purchase directly or indirectly in any manner or under any circumstances or conditions whatsoever be or become interested as an individual partner principal agent clerk employee stockholder officer director trustee or in any other capacity whatsoever in the business (other than that of the Purchaser) of manufacturing cement waterproofers of any kind within a radius of —— miles of the town of ——.

Provision for covenants.

18. If the Purchaser shall so require the Manager and the

Vendor shall in any conveyance or assignment to which the Purchaser may be entitled under this Agreement separately covenant with the Purchaser in the terms of clauses 16 and 17 of this Agreement.

Agreement to employ manager.

19. The Purchaser shall on the date fixed for completion of the purchase enter into a formal agreement in writing with the Manager to employ and shall from that date employ the Manager and the Manager shall act as manager of the business hereby agreed to be sold upon and subject to the following terms and conditions:

(1) The engagement shall commence on the date fixed for completion of the purchase and shall continue unless and until determined by three months' notice in writing served by either the Manager or the Purchaser Provided that the Purchaser may determine the said engagement at any time without notice upon tendering to the Manager a sum equal to three months' salary but without prejudice to the provisions hereinafter contained concerning the tenancy to be granted to the Manager

(2) The remuneration of the Manager shall be a fixed salary at the rate of £—— per annum payable by 52 equal instalments of £—— on Friday of every week except that the first payment shall be of £——

(3) The said agreement shall provide that the Purchaser shall grant to the Manager the tenancy agreement provided for in the next clause hereof.

Agreement to grant tenancy to manager.

20. The Purchaser shall on the actual date of completion of the purchase execute and deliver to the Manager a tenancy agreement of the bungalow and curtilage known as —— in the County of —— being part of the said property containing the following terms and conditions:

The date fixed for completion.

(1) A recital that under a written agreement dated the —— day of —— 19— the Manager entered into the employment of the Purchaser as manager of the business of XY Company carried on by the Purchaser at an annual salary of £—— and that it was a term of the said agreement of service that the Purchaser should on the date thereof grant to the Manager a tenancy upon the terms therein set forth

(2) During the continuance of the said agreement of service the Manager shall occupy the bungalow known as —— in the County of —— and immediately adjoining the premises of the said business of the Purchaser free of rent Provided that in the event of the said agreement of service being determined without or by less than three months' notice in writing for any cause whatsoever the tenancy shall not come to an end until the same shall be determined by three months' notice in writing served by the Purchaser on the Manager

(3) During the continuance of the tenancy the Manager shall pay all rates taxes assessments and outgoings of an annual or other periodically recurring nature (other than landlord's property tax) including water rate payable in respect of the said bungalow and curtilage and shall keep the same in good internal decorative repair and condition fair wear and tear excepted

(4) During the continuance of the tenancy the Purchaser shall put keep and maintain the structure (including the roof) of the said bungalow in good and substantial repair and condition and shall keep and maintain the outside thereof in good decorative repair

IN WITNESS, *etc.*

THE FIRST SCHEDULE ABOVE REFERRED TO

Part I

[*Insert description of the land referred to as coloured pink on plan*]

Part II

[*Incumbrances*]

THE SECOND SCHEDULE ABOVE REFERRED TO

Part I

[*Insert description of the land referred to as coloured green on plan*]

Part II

[*Incumbrances*]

FORM 14

Memorandum and Articles of Association of a Company Holding the Communal Parts of a Block of Freehold Flats and having Certain Powers of Management (*a*).

(*Drafted by K. E. B. Kemp, Esq., Barrister-at-Law*)

I

The Companies Act, 1948
Company limited by Guarantee and not having a share capital

MEMORANDUM OF ASSOCIATION

OF

THE BARN ASSOCIATION LIMITED

1. The name of the Company is "The Barn Association Limited."

2. The registered office of the Company will be situate in England.

3. The objects for which the Company is established are:—

(a) To acquire without consideration all those parts (which parts are hereinafter referred to as "the acquired land") of the land and buildings known as The

(*a*) This precedent may be used in conjunction with the form of Transfer of Freehold Flat at p. 651, *ante*, but the following minor alterations should be made to the Third Schedule to that form namely in the fourth line of clause 2 delete the word "private" and in clause 2 (iii) substitute "seven" for the word "two." The definition of a private company in the Companies Act, 1948, envisages the existence of a share capital.

In the present case some of the objects of the company may appear to overlap, but this is necessary so as to avoid the possibility that the flat owners inadvertently use the company for purposes which might be *ultra vires* if the objects were confined strictly within the requirements of the said Third Schedule. Further common form objects may be added if so desired.

If desired it is possible to have a private company limited by guarantee and having a share capital.

Barn —— in the County of —— in respect whereof House Converters Limited is registered as proprietor with an absolute title at H. M. Land Registry under title No. — for all the estate and interest of House Converters Limited therein together with the benefit of and subject to such easements stipulations covenants and conditions as concern or affect the same or the registered proprietor thereof whether under the provisions of any transfer of any part of The Barn to any other person or otherwise and upon such terms otherwise as the Company shall think fit

(b) To manage land and buildings whether belonging to the Company or not and to collect rents and income and to provide and supply to or for owners and occupiers of land or buildings services and goods

(c) To do all or any of the works or things following that is to say all works and things requisite necessary convenient or desirable for putting into and keeping in repair and decorative condition and generally maintaining and cultivating the acquired land and also the buildings and erections now or from time to time on or forming part of the land and buildings aforesaid known as The Barn (including rebuilding repairing and reinstating all or any part of the said land or buildings or erections in case of destruction thereof or damage thereto) and for providing lighting and heating facilities for and supplying electricity gas and water to the same and for insuring the same to such extent in such manner and against such risks as to the Company may seem proper or desirable and for paying the rates and taxes including water rate (if any) assessed thereon and including rates and taxes assessed on or payable by the owner or occupier of the acquired land

(d) To keep the buildings on the acquired land cleansed and lighted for use as a means of access to and from the several flats forming part of The Barn

and to keep the grounds of The Barn in a cultivated and tidy state for use and as an amenity in connection with such buildings or any part thereof

(e) To do all works and things which under the provisions contained in the transfer of any of the said flats to the registered proprietor thereof by House Converters Limited are required to be done by the Service Company mentioned in such transfer

(f) To purchase take on lease or in exchange hire or otherwise acquire any real or personal property which may be deemed necessary convenient or desirable for any of the purposes of the Company or for the benefit of the owners or occupiers of the said flats or any of them

(g) To construct alter and maintain any buildings or works necessary or convenient or desirable for any of the purposes of the Company or for the use of or as an amenity for the owners or occupiers of the said flats or any of them or any other land or buildings

(h) To take any gift of any real or personal property for any one or more of the objects of the Company whether or not subject to any special trust or condition

(i) To borrow and raise money in such manner as the Company may think fit

(j) To undertake and execute any trust or agency business (whether gratuitously or otherwise) the undertaking whereof may seem desirable whether as being convenient for or conducive to any of the objects of the Company or as being a convenience or amenity for the owners or occupiers of the said flats or any of them

(k) To draw make accept indorse discount execute and issue promissory notes bills of exchange bills of lading warrants debentures and other negotiable or transferable instruments

(l) To carry on all or any of the following businesses

namely builders and contractors decorators merchants and dealers in stone sand lime bricks timber iron steel hardware paint and other building or decorating requisites house and estate agents and insurance agents

(m) To sell let or dispose of all or any of the property of the Company

(n) To enter into and make and be party to and accept such covenants and agreements in relation to or in connection with the acquired land or any other land or any personal property as the company may think fit

(o) To do all such other things as are incidental to or conducive to the attainment of the above objects or any of them

(p) To do all or any of the things hereinbefore authorised either alone or in conjunction with or as trustee or agent for others or by or through trustees or agents and either with or without the intention or object of profit and whether gratuitously or otherwise

PROVIDED ALWAYS that the objects set forth in any sub-clause of this clause shall not except when the context expressly so requires be in any wise limited or restricted by reference to or inference from the terms of any other sub-clause or by the name of the Company. None of such sub-clauses or the objects therein specified or the powers thereby conferred shall be deemed subsidiary or auxiliary to the objects mentioned in the first sub-clause of this clause but the Company shall have full power to exercise all or any of the powers conferred by any part of this clause notwithstanding that the business undertaking property or acts proposed to be transacted acquired dealt with or performed do not fall within the objects of the first sub-clause of this clause.

4. The liability of the members is limited.

5. Every member of the Company undertakes to contribute to the assets of the Company in the event of the same being wound up during the time that he is a member or within one year afterwards for payment of the debts or liabilities of the

Company contracted before the time at which he ceases to be a member and of the costs charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves such amount as may be required not exceeding ten shillings.

6. There may be assigned to any member or class of members any preferential special or qualified rights or privileges over or as compared with any other member or class of members as regards participation in profits or assets and as regards voting and as regards winding up or otherwise howsoever.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBERS

1.
2.
3.
4., etc.

Dated the —— day of —— 19—.

Witness to the above signatures

II

The Companies Act, 1948

ARTICLES OF ASSOCIATION (*b*)

OF

THE BARN LIMITED

GENERAL

1. In these articles:—

"The Act" means the Companies Act, 1948

"the seal" means the common seal of the Company

(*b*) It is desirable for a company of this nature to have its regulations contained in one complete document. It will be noted that Table C is not made adoptive by the Act.

"secretary"	means any person appointed to perform the duties of the secretary of the Company
"The Barn"	means the land and buildings situate at and known as The Barn —— in the County of ——
"the eight flats"	means the eight flats into which The Barn has recently been converted
"flat owner"	in reference to any of the eight flats includes the purchaser from House Converters Limited of such flat the registered proprietor for the time being thereof and the personal representatives of a deceased registered proprietor

Expressions referring to writing shall unless the contrary intention appears be construed as including references to printing lithography photography and other modes of reproducing words in visible form. Unless the context otherwise requires words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations became binding on the Company.

2. For the purposes of registration the number of members with which the Company proposes to be registered is fifty but the directors may from time to time register an increase of members (*c*).

3. A register of members shall be kept in accordance with the provisions of section 110 of the Act.

4. Every member shall sign either the register of members or a separate document consenting to become a member of the Company.

(*c*) The number of members should be calculated on the footing that there may be not only one owner member for each flat, but also joint flat owners who become ordinary members under Article 7 (1) (as may occur not only on a purchase, but where personal representatives wish to be registered) or where persons cease to be flat owners and become ordinary members under Article 8 and have not resigned under Article 9; also the subscribers to the memorandum may be ordinary members.

MEMBERS

5. There shall be two classes of members namely Owner Members and Ordinary Members (*d*).

6. The subscribers to the memorandum of association and such other persons as shall in accordance with these Articles be admitted to membership by the directors or by an Owner Member shall be members of the Company.

The admission and registration of members shall (save as hereinafter provided) be under the control of the directors who may in their absolute discretion (subject to the provisions of these Articles) refuse to admit a person as a member. Provided that if at any time and so long as the number of members of the Company shall be reduced below seven each Owner Member shall be entitled to serve notice upon the Company that he proposes to appoint one person named in such notice as an Owner Member or Ordinary Member (as the case may be) of the Company and if at the expiration of twenty-eight days after such service the number of members has not been restored to seven the Owner Member serving such notice shall be entitled subject to the provisions of these Articles to admit and register such person as a member of the Company and for that purpose shall be entitled to have access to the register of members.

7. (1) Subject as hereinafter mentioned each of the respective flat owners of the eight flats (and no other persons) who pays to the Company a membership fee of £1 (*e*) in respect of each flat of which they are respectively the flat owners and signs an entry form and a title authority shall be entitled to become and be registered as an Owner Member in respect of the flat

(*d*) Ordinary members are necessary to ensure that the death of a flat owner does not reduce the number of members below seven: they will also be useful for the possible, even if unlikely, case of there being no quorum of owner members on the register. They will have to be persuaded to become members on altruistic grounds, but as their guarantee is only 10s. this should not be difficult.

(*e*) A small entrance fee is suggested as a means of providing petty cash for running expenses, and an annual subscription would provide continuity in this respect. No provision has been made in the Articles for payment of preliminary expenses, as it is assumed that House Converters Ltd. will bear these without expecting repayment.

or flats of which he is the flat owner. The said entry form shall include a description of the flat or flats in question and the title number or numbers under which the same is or are registered at H. M. Land Registry. The said title authority shall include an authority for the Company or its agents from time to time to inspect the register at H. M. Land Registry relating to such flat or flats. The said entry form and title authority shall include such other matters and be in such form as the directors may require. Provided that if in any case more persons than one constitute the flat owner in respect of a flat not more than one of them shall be entitled to be admitted or registered as an Owner Member in respect thereof and all such persons shall sign the said entry form and title authority and in such entry form shall apply for a particular one of them to be registered as an Owner Member in respect of such flat and may apply for the admission and registration of the others of them as Ordinary Members and the directors shall admit and register such persons as members accordingly

(2) Each Owner Member shall pay to the Company such subscription not exceeding £— per annum (*e*) as the directors may from time to time determine. Subscriptions shall be due on such date in each year as the directors decide.

8. Each person who is registered as an Owner Member in respect of a flat who ceases to be the flat owner or one of the persons who constitute the flat owner in respect of such flat shall forthwith cease to be an Owner Member and without any act on his part shall become and be registered as an Ordinary Member (*f*) but while he remains registered as an Owner Member any vote given by him and any quorum in which he is counted as a member shall be deemed to be as good and valid as if he had not ceased to be an Owner Member. Every Owner Member who ceases to be the flat owner or one

(*f*) The change from owner member to ordinary member is suggested both to prevent the number of members falling below seven and also to keep him as a member while he may owe to the Company money under any provision of the Articles. In special cases he can be released under Article 9.

of the persons who constitute a flat owner as aforesaid shall forthwith give notice in writing to that effect to the Company.

9. A member shall not resign if the effect of such resignation would be to reduce the number of members of the Company below seven. Subject as aforesaid a member with the previous permission of the Company in general meeting given by special resolution (*f*) may resign at any time.

10. Provided that the number of members of the Company would not thereby be reduced below seven the Company in general meeting may by special resolution determine that any Ordinary Member shall cease to be a member and thereupon such Ordinary Member (*g*) shall have no right in or claim upon the Company or its property and his name shall be removed from the register of members.

GENERAL MEETINGS

11. The Company shall in each year hold a general meeting (at such time and place as the directors shall appoint) as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it and not more than fifteen months shall elapse between the date of one annual general meeting and that of the next. Provided that so long as the Company holds its first annual general meeting within eighteen months of its incorporation it need not hold it in the year of its incorporation or in the following year.

12. All general meetings other than annual general meetings shall be called extraordinary general meetings.

13. The directors may whenever they think fit convene an extraordinary general meeting at such time and place as they direct and extraordinary general meetings shall also be convened on such requisition or in default by such requisitionists as provided by section 132 of the Act. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum any director or any two members of the Company having the right to vote at such a meeting

(*g*) This Article is inserted to cover unforeseen circumstances.

may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

NOTICE OF GENERAL MEETINGS

14. Not less than twenty-one days' notice in writing shall be given of the calling of an annual general meeting or of a meeting called for passing a special resolution and not less than fourteen days' notice in writing shall be given of the calling of any other meeting of the Company. In each case the notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given and shall specify the place the day and the hour of meeting and in the case of special business the general nature of that business and shall be given in manner hereinafter mentioned or in such other manner (if any) as the Company in general meeting may prescribe to such persons as are under the Articles of the Company entitled to receive such notices: but if so agreed by all the members entitled to be present and vote at a meeting or by such proportion of them as the Act prescribes shorter notice may be given of the calling of a meeting than is specified in this article.

15. The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings at that meeting.

PROCEEDINGS AT GENERAL MEETINGS

16. All business shall be deemed special that is transacted at an extraordinary general meeting and also all that is transacted at an annual general meeting with the exception of declaring a dividend the consideration of the accounts and balance sheets and the reports of the directors and auditors the election of directors in place of those retiring and the appointment of and the fixing of the remuneration of the auditors.

17. No business shall be transacted at any general meeting

unless a quorum of members is present at the time when the meeting proceeds to business: save as herein otherwise provided three (*h*) members entitled to attend and vote at a meeting present in person shall form a quorum.

18. If within half an hour from the time appointed for the meeting a quorum is not present the meeting if convened upon the requisition of members shall be dissolved: in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such time and place as the directors may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members or member present and entitled to attend and vote thereat shall be a quorum.

19. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the Company or if there is no such chairman or if within fifteen minutes after the time appointed for the holding of the meeting he shall not be present or is unwilling to act the directors present shall elect one of their number to be chairman of the meeting or if no director is willing to act or if no director is present the members present who are entitled to attend and vote at such meeting shall choose one of their number to be such chairman.

20. The chairman may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice of an adjournment of a meeting or of the business to be transacted at an adjourned meeting shall be necessary save when a meeting is adjourned for thirty days or more in which case notice thereof shall be given as if it were an original meeting.

(*h*) The number to be inserted as necessary for a quorum should be considered from the circumstances of each case. The health and age of some flat owners may make it advisable to reduce the number.

21. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of a show of hands) demanded by the Chairman or by at least two members present in person or by proxy who are entitled to vote or by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

Unless a poll be so demanded a declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

The demand for a poll may be withdrawn.

22. No poll shall be demanded on the election of the Chairman of the meeting or on a question of adjournment. A poll duly demanded at a meeting upon any other question shall be taken in such manner and at such time as the Chairman of the meeting directs and the result of the poll shall be deemed to be the resolution of that meeting. Any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

23. In the case of an equality of votes whether on a show of hands or on a poll the Chairman of the meeting at which the show of hands takes place or at which a poll is demanded shall be entitled to a second or casting vote.

24. Subject to the provisions of the Act a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been duly passed at a general meeting of the Company duly convened and held.

VOTES OF MEMBERS

25. Subject to the provisions of these Articles (*i*) on a show of hands every Owner Member shall have one vote and on a poll every Owner Member shall have one vote in respect of each flat in respect whereof he is registered as an Owner Member.

26. Every Ordinary Member shall be entitled to receive notices of and attend (*j*) every general meeting of the Company but save as hereinafter provided shall not be entitled to vote thereat either personally or by proxy. Provided that an Ordinary Member shall be entitled to vote at any general meeting of the Company in any of the circumstances following that is to say:—

(a) At any meeting at which a resolution is proposed for the winding up of the Company or notice of the presentation of a petition for winding up the Company is to be considered

(b) At any meeting whereat a resolution is proposed affecting the rights or privileges of Ordinary Members as a class or

(c) At any meeting held after the number of members of the Company has been reduced below seven and before the number of members has been restored to seven or more

(d) At any meeting held while the number of Owner Members in the United Kingdom is less than or has been reduced below the number required to form a quorum

(e) At any meeting held while any requirement of the Act has been left unfulfilled and by reason thereof the Company is liable to be wound up.

At any meeting mentioned in this proviso whether on a show of hands or on a poll an Ordinary Member shall have one vote.

(*i*) *e.g.*, Article 28.

(*j*) As ordinary members will exist only for the benefit of owner members, the right to attend at meetings is the least that should be offered to them. In addition, joint flat owners who are ordinary members under Article 7 should be entitled to know what takes place at meetings.

27. A member of unsound mind or in respect of whom an Order has been made by any court having jurisdiction in lunacy may exercise his voting rights under these Articles whether on a show of hands or on a poll by the person who is his committee receiver *curator bonis* or other person in the nature of a committee receiver or *curator bonis* appointed by that court and any such person may on a poll vote by proxy.

28. Without the consent of the Company in general meeting no member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the Company have been paid.

29. On a poll votes may be given either personally or by proxy. A proxy shall be a member of the Company.

30. The instrument appointing a proxy and the power of attorney or other authority if any under which it is signed or a notarially certified copy of that authority shall be deposited at the registered office of the Company or at such other place within the United Kingdom as is specified for that purpose in the notice convening the meeting not less than twenty-four hours before the time for holding the meeting or the adjourned meeting at which the person named in the proxy proposes to vote or in the case of a poll not less than twenty-four hours before the time appointed for the taking of the poll and in default the instrument of proxy shall not be treated as valid.

31. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit

"The Barn Association Limited

I/We —— of —— in the County of —— being a member/members of the above named Company hereby appoint —— of —— or failing him —— of —— as my/our proxy to vote for me/us on my/our behalf at the —— general meeting of the Company to be held on the —— day of —— 19— and at any adjournment thereof

Signed this —— day of —— 19—"

32. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing

a proxy shall be in the following form or a form as near thereto as circumstances admit:—

"The Barn Association Limited

I/We —— of —— in the County of —— being a member/members of the above named Company hereby appoint —— of —— in the County of —— or failing him —— of —— as my/our proxy to vote for me/us on my/our behalf at the —— general meeting of the Company to be held on the —— day of —— 19— and at any adjournment thereof

Signed this —— day of —— 19—

This form is to be used $\frac{\text{in favour of}}{\text{against}}$ * the resolution.

Unless otherwise instructed the proxy will vote as he thinks fit.

* Strike out whichever is not desired"

33. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

34. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed provided that no intimation in writing of such death insanity or revocation aforesaid shall have been received by the Company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

35. Any corporation which is a member of the Company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company and the person so authorised shall be entitled to exercise the same powers on behalf of the Corporation which he represents as that corporation could exercise if it were an individual member of the Company.

DIRECTORS

36. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or the majority of them. A director [shall] [need not] (*k*) be a member of the Company.

37. No director or officer of the Company shall receive any remuneration for his services unless it is otherwise resolved by the Company in general meeting (*l*) but every director and officer shall be paid all expenses properly incurred by them in connection with the business of the Company including reasonable travelling and hotel and other expenses incurred in consequence of their attendance at board meetings and otherwise in the execution of their duties as directors.

BORROWING POWERS

38. The directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking and property or any part thereof and to issue debentures debenture stock and other securities whether outright or as security for any debt liability or obligation of the Company or of any third party.

POWERS AND DUTIES OF DIRECTORS

39. The business of the Company shall be managed by the directors who may exercise all such powers of the Company as are not by the Act or by these Articles required to be exercised by the Company in general meeting subject nevertheless to the provisions of the Act or of the Articles and to such regulations being not inconsistent with the aforesaid provisions as may be prescribed by the Company in general meeting but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

(*k*) Delete whichever of the words in brackets are not required and if necessary delete subclause (e) of Article 45 or subclause (c) of Article 90.

(*l*) It may be thought desirable to require a special resolution.

40. The Company shall forthwith acquire the property referred to as "the acquired land" in clause 3 (a) of the Memorandum of Association together with the benefit of and subject to the easements stipulations covenants and conditions therein mentioned and otherwise upon such terms as the directors in their absolute discretion think fit and the directors shall do all such things (including the affixing of the seal to a transfer thereof to the Company) as they may consider desirable to effect such acquisition and any such transfer may be in such form and contain such covenants on the part of the Company as the directors think proper.

41. All cheques promissory notes drafts bills of exchange and other negotiable instruments and all receipts for moneys paid to the Company shall be signed drawn accepted endorsed or otherwise executed as the case may be in such manner as the directors shall from time to time determine.

42. Unless and until otherwise directed by a special resolution of the Company in general meeting the directors shall endeavour so to carry on the business of the Company as not to make profit (*m*) but they may in their absolute discretion make provision for creating and setting aside a reasonable reserve fund for any general or particular purpose.

43. The directors shall cause minutes to be made in books provided for the purpose:—

(a) of all appointments of officers made by the directors

(b) of the names of the directors present at each meeting of the directors

(c) of all resolutions and proceedings at all meetings of the Company and of the directors.

44. (1) In this Article the expression "maintenance work" means any works or things connected with the maintenance of the acquired land or the external parts of any of the eight flats (including decorating the window frames and any wood or metal work on such external parts) insuring The Barn or

(*m*) This Article is inserted to make it clear what are the responsibilities of the directors. It should be remembered that if a profit is made (and a reserve fund implies profits) questions of tax will arise.

any part thereof providing lighting facilities (including electricity) for or paying the rates or taxes including water rates (if any) assessed on the acquired land and including rates and taxes assessed on or payable by the owner or occupier of the acquired land or (in case of destruction or damage by fire storm flood or tempest) the rebuilding repairing or reinstating of The Barn or any part thereof.

(2) If and when the Directors determine that any act proceeding or thing in connection with any object of the Company is necessary or desirable and such act proceeding or thing will or may directly or indirectly involve the expenditure of money or the incurring of a debt or obligation by the Company or the Directors or any of them the Directors may demand from each Owner Member (and from every other flat owner of any of the eight flats if such act proceeding or thing involves maintenance work) the payment of his due proportion of the estimated cost of such act proceeding or thing and may refrain from doing such act proceeding or thing until each Owner Member (and also each such other flat owner) has paid to the Company such due proportion.

(3) The said due proportion shall be (a) in any case involving maintenance work such proportion of the estimated cost aforesaid as the rateable value of the flat in respect whereof the Owner Member is registered as an Owner Member (or in the case of any such other flat owner of the flat whereof he is the flat owner) bears to the aggregate rateable value of all the eight flats and (b) in any other case such proportion as the Directors deem reasonable in the circumstances. The amount of his due proportion when demanded from an Owner Member shall be deemed a debt due from him to the Company and recoverable as such. The estimated cost aforesaid means the cost of such act proceeding or thing as estimated by the Directors (including therein a reasonable allowance for unforeseen contingencies).

(4) If the actual cost of doing or carrying out such act proceeding or thing is less or more than the said estimated cost then (i) in any case where such act proceeding or thing

involves maintenance work each flat owner's due proportion of the difference between the estimated cost and the actual cost shall (as the case may be) be credited to him or be paid by him to the Company on demand and be deemed to form part of the estimated cost aforesaid and recoverable as such (ii) in any other case (in the event of a deficiency) the Directors shall demand from each Owner Member his due proportion of such difference and the same shall be deemed to be part of such Owner Member's due proportion of the estimated cost aforesaid or (in the event of a surplus) shall credit (*n*) each Owner Member with his due proportion thereof.

DISQUALIFICATION OF DIRECTORS

45. The office of director shall be vacated if the director:—

(a) becomes bankrupt or makes any arrangement or composition with his creditors generally: or

(b) becomes prohibited from being a director by reason of any Order made under section 188 of the Act: or

(c) becomes of unsound mind: or

(d) resigns his office by notice in writing to the Company: or

(e) ceases to be a member of the Company (*o*): or

(f) shall for more than six months have been absent without permission of the Directors from meetings of the Directors held during such period: or

(g) at the commencement of business at any annual general meeting has since the date of the last previous annual general meeting attained the age of 70 (*p*) but this last provision shall not prevent any such director from being eligible for re-election. The provisions of section 185 of the Act shall not apply

(*n*) In exercising this power the directors will in most cases be bound to credit or repay under the provisions of the Third Schedule to the Transfer.

(*o*) See note to Article 36.

(*p*) If any alteration is made in this provision, Article 48 (2) should also be considered.

to the Company. The retirement of a director under this subclause shall (if such director was not due to retire in rotation at such first mentioned annual general meeting) be disregarded in determining when or whether any other directors are to retire.

ROTATION OF DIRECTORS

46. At the first Annual General Meeting of the Company all the directors shall retire from office and at the Annual General Meeting in every subsequent year one-third of the directors for the time being or if their number is not three or a multiple of three then the number nearest one-third shall retire from office.

47. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless otherwise agreed amongst themselves) be determined by lot.

48. (1) A retiring director shall be eligible for re-election

(2) A person who has attained the age of 70 (*q*) and offers himself or to his knowledge is proposed for re-election or election as a director shall forthwith give notice in writing to the Company of his age. Whenever practicable a statement of such person's age shall be included in the notice convening the meeting at which such re-election or proposal for election is to be considered and shall also be read at the commencement of business at such meeting.

49. The Company at the meeting at which a director retires in manner aforesaid may fill the vacated office by electing a person thereto and in default the retiring director shall if offering himself for re-election be deemed to be re-elected unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such director shall have been put to the meeting and lost. The Company at such meeting may also at such meeting without notice in that behalf fill up any other vacancies.

(*q*) See last note.

50. The Company from time to time by ordinary resolution may increase or reduce the number of directors and may also determine in what rotation the increased or reduced number is to go out of office.

51. A casual vacancy in the office of director may be filled by an appointment to such office being made by the directors. The directors so appointed shall hold office only until the next following annual general meeting and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at such meeting.

PROCEEDINGS OF DIRECTORS

52. The directors may meet together for the despatch of business adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the chairman shall have a second or casting vote. A director may and the secretary on the requisition of a director shall at any time summon a meeting of directors. It shall not be necessary to give notice of a meeting of directors to any director for the time being absent from the United Kingdom.

53. The quorum necessary for the transaction of the business of the directors shall be fixed by the directors and unless so fixed shall be two.

54. The continuing directors may act notwithstanding any vacancy in their body but if and so long as their number is reduced below the number fixed by or pursuant to these articles as the necessary quorum of directors the continuing directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the Company but for no other purpose.

55. The directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same the directors present may choose one of their number to be chairman of the meeting.

56. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed upon it by the directors.

57. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid or that they or any of them were disqualified be as valid as if every such person had been duly appointed and was qualified to be a director.

58. A resolution in writing signed by all the directors for the time being entitled to receive notice of a meeting of directors shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

SECRETARY

59. The secretary shall be appointed by the directors for such term at such remuneration (if any) and upon such conditions as they may think fit and any secretary so appointed may be removed by them.

60. A provision of the Act or these Articles requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as or in place of the secretary.

THE SEAL

61. The directors shall provide for the safe custody of the seal which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf and every instrument to which the seal shall be affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

ACCOUNTS

62. The directors shall cause proper books of account to be kept with respect to:—

(a) All sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure takes place

(b) All sales and purchases of goods by the Company and

(c) The assets and liabilities of the Company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

63. The books of account shall be kept at the Company's registered office or subject to section 147 (3) of the Act at such other place or places as the directors think fit and shall always be open to the inspection of the directors.

64. The Company in general meeting may from time to time determine at what times and places and under what conditions the accounts and books of the Company or any of them shall be open to the inspection of members not being directors. Subject as aforesaid the said accounts and books shall be open to the inspection of such members at all reasonable times.

65. The directors shall in accordance with the provisions of sections 148, 149 and 157 of the Act cause to be prepared and to be laid before the Company in general meeting such profit and loss accounts income and expenditure accounts balance sheets and reports as are referred to in those sections.

66. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Company in general meeting together with a copy of the auditors report shall not less than twenty-one days before the date of the meeting be sent to every member of and every holder of debentures of the Company Provided that this article shall not require a copy of those documents to be sent to any person of whose address the Company is unaware or to more than one of the joint holders of any debentures.

AUDIT

67. Auditors shall be appointed and their duties regulated in accordance with sections 159 to 162 of the Act.

NOTICES

68. A notice may be given by the Company to any member either personally or by sending it by post to him or to his registered address or if he has no registered address within the United Kingdom to the address if any within the United Kingdom supplied by him to the Company for the giving of notice to him.

69. Where a notice is sent by post service of the notice shall be deemed to be effected by properly addressing prepaying and posting a letter containing the notice and to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the letter containing the same is posted and in any other case at the time at which the letter would be delivered in the ordinary course of post.

70. Notice of every general meeting shall be given in any manner hereinbefore authorised to:—

(a) Every member except those members who (having no registered address within the United Kingdom) have not supplied to the Company an address within the United Kingdom for the giving of notices to them

(b) The auditor for the time being of the Company

[(c) Every director of the Company who is not a member] (*r*)

No other persons shall be entitled to receive notices of general meetings.

NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBERS

1.

2.

3.

4., etc.

Dated this —— day of —— 19—

Witness to the above signatures

(*r*) See note to Article 36.

FORM 15

FORMS OF CERTIFICATE UNDER THE FINANCE ACT, 1956 (*a*)

I

Certificate to be Inserted in a Conveyance on Sale where the Consideration or Aggregate Consideration does not Exceed £3,500. Variations where such Consideration Exceeds £3,500 but does not Exceed £4,250 or Exceeds £4,250 but does not Exceed £5,000:—

IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds [£3,500] [£4,250] [£5,000].

II

Certificate to be Inserted in a Voluntary Conveyance where the Value of the Property does not Exceed £3,500. Variations

(*a*) By s. 30 of the Finance Act, 1956, which came into operation on August 1, 1956, certain of the rates of stamp duty payable on conveyances and leases have been altered in favour of the taxpayer. There are four cases to be considered:—

(1) The relief formerly applicable in the case of conveyances and leases where the consideration or aggregate consideration or value did not exceed £500 has now been extended to similar transactions where the consideration or aggregate consideration or value does not exceed £3,500. The duty in these cases is accordingly at the rate of 10s. per cent.

(2) The relief formerly applicable where the consideration or value exceeded £500 but did not exceed £3,000, is now applicable where the consideration or value exceeds £3,500 but does not exceed £4,250. Accordingly, the duty in such cases is at the rate of £1 per cent.

(3) The relief formerly applicable where the consideration or value exceeded £3,000 but did not exceed £3,450 is now applicable where the consideration or value exceeds £4,250 but does not exceed £5,000. The rate of duty in such cases is therefore £1 10s. per cent.

(4) Where the consideration or value exceeds £5,000, there is no relief and, as before, the rate of duty is £2 per cent.

As heretofore, relief is only claimable in cases (1), (2) and (3) where the instrument contains the appropriate certificate of value and no relief is obtainable in the case of leases where the rent exceeds £20 per annum.

where the Value Exceeds £3,500 but does not Exceed £4,250 or Exceeds £4,250 but does not Exceed £5,000:—

IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the property conveyed or transferred exceeds [£3,500] [£4,250] [£5,000].

III

Certificate to be Inserted in a Lease where the Rent does not Exceed £20 per annum and a Premium not Exceeding £3,500 is Charged or where the Aggregate Amount of the Premium and the Other Consideration under any Larger Transaction or Series of Transactions of which the Lease Forms Part, does not Exceed £3,500. Variations where the Premium or Aggregate Consideration Exceeds £3,500 but does not Exceed £4,250 or Exceeds £4,250 but does not Exceed £5,000:—

IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration other than rent exceeds [£3,500] [£4,250] [£5,000].

FORM 16

Deed of Partnership between Medical Practitioners who have entered the National Health Service, whereby a New Partner is introduced who is outside the Service (*a*).

Drafted by E. H. Bodkin, Esq., of Lincoln's Inn

THIS DEED OF PARTNERSHIP is made the —— day of —— 19— BETWEEN A. of etc. of the first part B. of etc. of the second part and C. of etc. of the third part Parties.

WHEREAS:—

(1) The said A. and B. have for some years carried on the practice of general medical practitioners at —— in the County of —— under Articles of Partnership dated the —— day of —— 19— and made application in the prescribed manner for entry of their names on the Medical List for the said area before February 16, 1950 which application was granted and they have since provided services under the National Health Service at —— aforesaid Recitals: former practice in partnership;

(2) The said C. has not entered his name on any Medical List As to Medical List;

(3) The said A., B. and C. have agreed to continue the said practice in partnership together for the period and on the terms hereinafter mentioned Agreement for new partnership.

(*a*) The new partner will be able at any time to apply for the inclusion of his name on the Medical List, but he will not qualify for compensation for inability to sell his goodwill: National Health Service (General Medical and Pharmaceutical Services) Regulations, 1954 (S.I. 1954, No. 669), Part III, para. 9. Nor does there appear to be any likelihood of the law being altered so as to permit sale of his goodwill. Consequently only a practitioner with no valuable goodwill is likely now to enter the Service. The former partners will have qualified for compensation under the National Health Service Amendment Act, 1949, s. 3, if they applied for entry of their names before February 16, 1950.

It may be wiser to apply for the Certificate of the Medical Practices Committee that the partnership deed does not contravene the statutory prohibition on the sale of goodwill.

NOW THIS DEED WITNESSETH as follows—

Old Articles to be superseded.

1. (1) The said Articles of Partnership dated the —— day of —— 19— are hereby superseded as from the —— day of —— 19—

(2) The book debts of the former partnership carried on under the said Articles shall belong to and the liabilities thereof shall be discharged by the said former partnership

Agreement for new partnership.

2. The said A., B. and C. shall become and remain partners in the profession of general medical practitioners in continuation of the said practice heretofore carried on by the said A. and B. for the term of their joint lives subject to determination as hereinafter provided

Power to retire.

3. Any partner may retire from the partnership upon giving to the other partners or partner 3 months' notice in writing of his desire so to do expiring in the case of the said A. or B. not earlier than the —— day of —— 19— and in the case of the said C. not earlier than the —— day of —— 19— and on the expiration of such notice the partnership shall determine accordingly so far as regards the partner giving such notice (*b*)

Provisions for C. to enter Health Service.

4. The said C. shall be at liberty at any time hereafter to apply for his name to be entered on the Medical List for the area in which the practice is carried on and to perform medical services under the National Health Service accordingly but shall not be entitled to apply for his name to be entered on the Medical List for any other area PROVIDED that if his application for entry of his name on the Medical List for the area in which the partnership practice is carried on shall be granted subject to a condition excluding the performance by him of general medical services in that part of the area wherein the said practice is carried on and he shall elect to enter the National Health Service on such condition then (unless he shall appeal to the Minister of Health against such condition and his appeal shall be allowed) the other partners or partner may give [one] month's notice in writing to the said C. to determine the partnership

(*b*) Power to the senior partners to introduce a nominee if the option to purchase his share on his retirement (see cl. 21) is not exercised may be included.

and on the expiration of such notice the partnership shall be determined accordingly so far as regards the said C.

Firm name and registration.

5. (1) The partnership shall be carried on under the style or firm name of A., B. and C. at the leasehold surgery or consulting room at No. —— —— Street of the former partnership between the said A. and B. and at the respective residence of the partners and at the local health centre (if any) or at such other premises as may be agreed and approved by the Executive Council for the area and the requirements of the Business Names Act 1916 as to registration of the firm and any changes therein shall be duly complied with

Consulting room.

(2) The said surgery or consulting room at No. —— —— Street shall be assets of the partnership and the said A. and B. shall be indemnified by the partnership against the liabilities under the lease thereof

Drugs, etc., to be taken over.

6. The motor-cars and accessories and the drugs bottles phials instruments and apparatus (other than those purchased out of moneys provided for that purpose under the National Health Service) belonging to the said former partnership between the said A. and B. shall be assets of the partnership and the said C. shall pay to the said A. and B. [in equal shares] one third of the [sum at which the same have been valued] [the agreed value thereof]

Remuneration under Health Service.

7. (1) All salaries and other remuneration received from any appointment held or to be held by any partner and all fees payments and allowances under the National Health Service (other than payments in respect of the supply of drugs and appliances) and all premiums from pupils or apprentices and pecuniary gratuities from patients (other than legacies) and all other professional emoluments of any description whether ordinary or extraordinary shall be treated and accounted for in the partnership books as profits of the partnership

(2) For the purposes of this clause the amount to be accounted for to the partnership in respect of payments under the National Health Service shall be the net amount payable to a partner after deduction of his contributions in respect of superannuation benefits and in respect of salaries of any appointment or office

shall be the gross amount thereof after adding back the amount (if any) deducted therefrom in respect of superannuation contributions

Allocation of patients.

8. The partners may at any time agree that the registered patients on their respective lists may be allocated between them in any agreed proportion for the purpose of calculating the loadings to which they are respectively entitled under the National Health Service but such allocation shall not affect their shares of the net profits (*c*)

Superannuation benefits.

9. The partners [shall] [shall not] apply to the Executive Committee for the area of the partnership practice to have the aggregate of the partners' contributions in respect of superannuation benefits credited to them in proportion to their shares in the net profits (*d*)

Outgoings.

10. (1) All outgoings of whatsoever kind and expenses incurred in carrying on the partnership or in anywise relating thereto including expenses of and incidental to attendances upon patients and the performance of the duties of any appointment and any expenses of indemnifying the said A. and B. against the liabilities of the said lease of the said surgery or consulting room at —— aforesaid and the wages of dispensers and assistants and of servants employed exclusively in the surgeries and consulting rooms of the partnership and the expenses of lighting heating and cleaning the same and all telephone charges thereat shall be charged against revenue and any deficiency shall be borne by the partners in the shares in which they are for the time being entitled to the profits of the partnership (*e*)

(2) The partners shall each be entitled to an allowance of

(*c*) This would be so in any case: National Health Service (General Medical and Pharmaceutical Services) Regulations, 1954, First Schedule, Part II, para. 7.

(*d*) If the proportion of the patients registered with each partner does not correspond to his share of the profits, an application for apportionment should be made.

(*e*) See as to the engagement of assistants and the consent of the Executive Council thereto, National Health Service (General Medical and Pharmaceutical Services) Regulations, 1954, First Schedule, Part I, para. 8 as amended by National Health Service (General Medical and Pharmaceutical Services) Amendment Regulations, 1956; S.I. 1956, No. 1076.

£—— per annum towards the cost of keeping and running a motor-car for the purposes of the partnership such sum to be paid before division of the profits

Profits.

11. The partners shall be entitled to the net profits of the partnership and the losses shall be borne by the partners in the proportions following that is as to the said A. —— shares the said B. —— shares and the said C. —— shares. The net profits shall be divided between the partners immediately after the signing of the annual general account

Option for C. to acquire further shares.

12. (1) The said C. shall have the option to be signified to the other partner or partners by —— months' notice in writing of acquiring the following further shares in the future profits [goodwill and other assets] of the partnership that is to say on the —— day of —— 19— one —— share on the —— day of —— 19— a further —— share and on the —— day of —— 19— a further —— share

(2) The sum to be paid for each such further share shall be a sum equal to —— years' purchase of the average annual net profits of such share calculated during the —— years immediately preceding the then last day for taking the annual general account [together with the value (to be ascertained by valuation) of a corresponding share in any other assets belonging to the partnership] (no payment being made in respect of goodwill) and the said sum shall be paid to the said A. and B. or whichever of them is then a partner and if both are then partners in the proportions in which they are for the time being entitled to the net profits of the partnership And after such acquisition the share of the said C. shall be correspondingly increased and the shares of the said A. and B. or whichever of them is then a partner shall be correspondingly reduced but so that the shares of the said A. and B. if both are then partners shall continue to bear the same proportion between them as their original shares PROVIDED that if the said C. shall so desire the share to be acquired under the last of the options conferred by this clause and the proportions in which it is to be acquired from the said A. and B. or whichever of them is then a partner shall be adjusted so as to secure equality between all the then partners

(3) If the said C. shall not on any of the days hereinbefore fixed for the exercise of an option acquire a further —— share he shall be entitled on any of the subsequent days to acquire (in addition to a further —— share) the share or shares which he might have acquired under the option or options not exercised (*f*)

Drawings.

13. Each partner may draw out on the first day of each month on account of profits the amount following that is to say the said A. and B. an amount not exceeding £—— and the said C. an amount not exceeding £—— but if in any year the amount so drawn out by a partner shall on taking the annual general account be found to be in excess of his share of the net profits he shall on signature of such annual general account refund the excess without interest

Bankers.

14. All moneys and securities not required for current expenses shall be paid into and deposited with the —— Bank or such other bank as may be agreed from time to time and any partner may draw cheques on the partnership account

Accounts.

15. (1) Proper books of account shall be kept by the partners and entries made therein of all attendances and such other matters transactions and things as are usually entered in books of account kept by general medical practitioners and as may be necessary or proper under the National Health Service and such books and all letters papers and documents belonging or relating to the partnership shall be kept at the said surgery or consulting room at —— or in such other place as may be agreed and shall be open to inspection by any partner

(2) On the —— day of —— in every year of the partnership (including the first) a general account shall be taken showing the assets and liabilities of the partnership and the share of profits due to each partner and such account shall be signed by the partners and shall thereupon become binding upon all

(*f*) To prevent any question of a sale of goodwill on the ground that C. is performing services for less than they are worth within the meaning of s. 35 (4) (c) of the National Health Service Act, 1946, provision should be made for his share of profits becoming equal to that of the other partners within a fixed period, not exceeding at the most ten or twelve years.

of them except that any manifest error found and signified by any partner to the others within —— months shall be rectified

16. Each partner shall be just and faithful to the others in all transactions relating to the partnership and shall give a true account of the same when reasonably required by the others or other

"Just and faithful" clause.

17. Each partner shall punctually pay and discharge his present and future separate debts and engagements and shall at all times keep the other partners or partner and their representatives and the partnership assets indemnified against the same and against all actions proceedings costs charges claims and demands in respect thereof

Partners to pay their separate debts.

18. (1) Each partner shall at all times devote the whole of his time and attention to the partnership business (including any professional services to be performed under the National Health Service whether by the said A. and B. or the said C. if he shall enter his name on the Medical List as hereinbefore provided) and carry out the same for the greatest advantage of the partnership [and shall use his best endeavours to continue his tenure of any appointments now held by him]

Attention to business, and vacations.

(2) Each partner shall nevertheless be entitled to vacations not exceeding in the aggregate —— weeks in each year

(3) If any partner shall absent himself voluntarily from the partnership business for an aggregate period in any one year exceeding the aggregate period hereinbefore permitted for vacations or shall absent himself on account of illness accident or other unavoidable cause for a continuous period exceeding —— days the other partners or partner may engage and pay at the sole cost of the partner so absenting himself a qualified locum tenens until the absent partner shall again attend to the partnership business PROVIDED that the partner so absenting himself shall be entitled at his option to require that any period of absence or part thereof shall be reckoned as a period of vacation

19. Neither partner shall without the consent of the other partners or partner

Negative provisions.

(a) Carry on or be concerned or interested directly or indirectly and whether alone or as partner or assistant in the profession of a general medical practitioner

(b) assign mortgage or charge his share in the partnership

(c) hire or (except in the case of gross misconduct) dismiss any person in the employment of the partnership or introduce any person into the partnership as an apprentice or otherwise

(d) do or knowingly suffer anything whereby the property of the partnership may be seized or taken in execution.

Power to expel a partner.

20. If any partner shall (a) fail to account for or to pay over or refund any moneys for which he is accountable to the partnership within —— days after being required in writing by the other partners or partner so to do (b) suffer his share to be charged for his separate debt (c) become bankrupt or enter into any composition or arrangement with or for the benefit of his creditors (d) commit any flagrant breach of professional etiquette or of his duties as partner (e) have his name removed from any Medical List (f) enter his name on the Medical List for any other area than that in which the partnership practice is carried on (g) become permanently incapacitated by lunacy ill-health accident or otherwise from performing his part of the partnership contract Then and in any such case the other partner or partners may by notice in writing to the defaulting partner expel him from the partnership and publish a notice of dissolution of the partnership in the London Gazette and the partnership shall be determined as from the date of giving such notice of expulsion so far as regards such partner but without prejudice to any remedy of the other partners or partner for any antecedent breach of the provisions of the partnership express or implied PROVIDED that if any question shall arise as to whether a case has happened to authorise the exercise of this power such question shall be referred to arbitration under the provision hereinafter contained

Dissolution.

21. (1) If during the continuance of the partnership any partner shall die become bankrupt be expelled or retire from the partnership or notice to determine the partnership shall be given under the power herein contained or the partnership shall

be dissolved by the Court consequent upon the lunacy incapacity or misconduct of a partner Then and in any of such events the other partners or partner shall have the option of acquiring (if more than one in the proportion in which they are then entitled to the net profits) as from the date when the partnership is determined or dissolved the share of the partner who shall have occasioned such determination or dissolution (hereinafter called the outgoing partner) and such option shall be exercised by notice in writing within 3 months of such determination to the outgoing partner or his representatives

(2) If such option is exercised the partnership shall be continued between the other partners if more than one under the provisions of this deed so far as applicable

(3) The purchase money for the share of the outgoing partner shall (subject as hereinafter provided) be the fair value thereof at the date of determination for which purpose an account shall be taken of his share of unpaid profits up to the date of determination and a valuation shall be made of all assets requiring valuation

(4) If the outgoing partner shall be the said C. his share of goodwill shall (provided payment therefor shall not be prohibited by statute) be valued at —— years' purchase of his share of the average net profits of the partnership calculated (if the partnership shall have so long continued) during the three years immediately preceding the last day for taking the annual general account and if not then from the commencement of the partnership up to that date but if payment for his share of goodwill shall be so prohibited the right thereto shall vest without payment in the partners or partner exercising the said option as part of his share

(5) If the outgoing partner shall be a partner other than the said C. no payment shall in any event be made in respect of his share of goodwill but the right thereto shall vest without payment in the partners or partner exercising such option as part of his share (*g*)

(*g*) The share of goodwill, if paid for, should be valued on the footing that A and B cannot sell it when acquired by them, since they have entered

(6) Any premises used for the purposes of partnership shall be valued on the footing that they have not previously been used for the purposes of a medical practice in accordance with s. 35 (3) of the National Health Service Act 1946

(7) The purchase money when ascertained shall be paid by —— equal quarterly payments (the first to be made at the expiration of —— months from the date of determination of the partnership) with interest at the rate of £—— per cent. per annum on the amount for the time being unpaid and shall be secured by a deed of covenant to be executed by the purchasing partners or partner

(8) The outgoing partner or his representatives shall do all acts and sign or execute all documents necessary to vest in the purchasing partners or partner the goodwill and other assets of the partnership at the date of determination

(9) If the option shall not be exercised in manner hereinbefore provided the partnership shall be wound up as provided by the Partnership Act 1890 except that the goodwill shall not be sold but shall be divided between the partners

Covenant against competition.

22. The partners hereby mutually covenant and agree that in consideration of the agreement for partnership herein contained a partner who retires or who is expelled or to whom notice to determine is given under the provisions hereinbefore contained shall not for a period of [five] years from the date of his retirement or expulsion within a radius of —— miles from the principal partnership surgery or consulting room at such date (or if there shall be none then from the then residence of the then senior partner)—

---

their names on the Medical List and cannot dispose of their right to goodwill in that area, whether original or acquired. C, on the other hand, can sell not only his own share of goodwill, but any share acquired from A or B: National Health Service (Amendment) Act, 1949, s. 8.

It may be desirable to make the option of purchase as between A and B exercisable on the same terms as that under the original partnership. This will preserve their right to payment of compensation if their option is exercised by one of them for purchase from the other: National Health Service (Amendment) Act, 1949, ss. 1 (5), 2.

(1) Whether alone or in partnership with any other person or as assistant to any person and either directly or indirectly (a) engage in the practice of a general medical practitioner or any branch of medicine surgery or midwifery usually performed by such practitioners or (whether or not under the National Health Service) attend patients therein or (b) prescribe or perform any specialised treatment in medicine surgery or midwifery directly for or on the request of any patient who is not introduced to him by another medical practitioner

(2) Be concerned or interested whether directly or indirectly and whether financially or otherwise in any competing professional business carried on within the area aforesaid PROVIDED that the covenants aforesaid shall not prevent a retiring or expelled partner or a partner to whom notice to determine is given hereunder from practising as a consultant physician or surgeon within such period and area

23. All notices to be given under this Deed shall be sufficiently served by leaving the same addressed to the partner or partners concerned at his or their respective residences or any consulting room or surgery attended by them respectively Notices.

24. (1) If during the continuance of the partnership or at any time afterwards any dispute difference or question shall arise between the partners or their respective representatives touching the partnership or the accounts or transactions thereof or the determination or winding up thereof or the construction meaning or effect of this Deed or anything herein contained or as to the rights and liabilities of the partners or their representatives under this Deed or otherwise in relation to the premises such dispute difference or question shall be referred to a single arbitrator to be nominated by the President for the time being of the Royal College of Physicians

(2) Any of the partners may require that the question whether having regard to any change in the law relating to the National Health Service it is just and equitable that the partnership should be continued or dissolved or the terms thereof should

be varied shall be referred to arbitration under this present provision and an award may in that event be made that the same shall so continue or be dissolved and in either case on any terms

IN WITNESS, *etc.*

FORM 17

Trust Deed for the creation of a Fixed or Flexible Unit Trust (*a*)

Drafted by Douglas Barker, Esq., of Lincoln's Inn

THIS TRUST DEED is made the —— day of —— 19— BETWEEN THE —— COMPANY LIMITED, whose registered office is situate —— (hereinafter called "the Managers") of the one part and —— BANK EXECUTOR & TRUSTEE COMPANY LIMITED whose registered office is situate —— (hereinafter called "the Trustees") of the other part

WHEREAS:—

(1) The Managers have purchased the securities particulars whereof are set out in the First Schedule hereto and have vested the same in the Trustees on the terms and conditions hereinafter appearing and

(2) the Managers may hereafter from time to time purchase further securities and procure the same to be vested in the Trustees pursuant to the provisions in that behalf hereinafter appearing to be held on the same terms and conditions

NOW THIS DEED entered into with the intent that the provisions hereof shall apply to and enure for the Managers and Trustees and the holders for the time being of the sub-units issued in pursuance of the provisions hereof WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:—

(*a*) The first Unit Trust in England was formed in 1931. Since that date they have become a recognised financial institution. In a Fixed Trust the portfolio of underlying investments can only be varied within very strict limits set out in the Trust Deed. In a Flexible Trust the Managers have a greater power to vary the securities. Most of the modern trusts give the Managers a considerable latitude in this respect. The precedent illustrates one form of the theory underlying such Trusts and gives the usual clauses in a Trust Deed. In certain circumstances, however, the Board of Trade, the Council of the Stock Exchange, Unit Trusts Association and Unit Trust Control Council insist on further regulatory provisions being included.

THE TRUST FUND

1. The Trustees shall stand possessed of the Trust Fund upon trust for the holders of the sub-units issued in pursuance of the provisions of this Deed and from time to time outstanding Upon the terms and conditions herein declared.

2. The Trust Fund shall initially comprise the portfolio of securities set out in the First Schedule hereto and shall constitute one complete unit the beneficial interest in which shall be divided into 5,000 sub-units, each of which sub-units shall entitle the holder thereof equally with the holder or holders of every other sub-unit to such interest in the Trust Fund as an entirety as is more particularly set out hereinafter but subject thereto shall not entitle the holder thereof to any particular security comprised in the Trust Fund or any part thereof.

INCREASE IN NUMBER OF UNITS

3. The Managers may from time to time pay and transfer or cause to be transferred into the names of the Trustees further sums of cash and securities identical with those comprising a unit of the Trust Fund at the date of such payment and transfer for the purpose of creating new units to a limit of —— units. Each new unit shall be divided into 5,000 sub-units and the Trustees if they are of the opinion that it is desirable to create new units at the time of such payment and transfer may accept such cash and securities and issue certificates for the number of new sub-units thereby created. Provided always that the Trustees shall not issue any certificates for sub-units to be created until either they shall have received the necessary cash and underlying securities or contract notes by Brokers satisfactory to the Trustees for the purchase of such securities plus a sum of money necessary to pay for the same on delivery or they shall have received from a London clearing bank an irrevocable and unconditional undertaking to deliver the relative underlying securities without payment. Every sub-unit created in pursuance of the provisions of this clause shall rank pari passu in every respect with every other sub-unit of the Trust issued or to be issued.

4. On the creation of new sub-units the Managers shall pay to the Trustees a further sum in cash equal to the proportion of the dividends on the securities already comprised in the Trust Portfolio and in the hands of the Trustees which the new sub-units bear to the sub-units already in issue or deemed to be in issue.

SALE OF SUB-UNITS

5. The Managers shall have the exclusive right to sell the sub-units and unless and until sold every sub-unit shall be deemed to be in issue and to be held by the Managers and while so held all the provisions of this Deed relating to beneficial rights attaching to sub-units shall enure for the benefit of the Managers.

6. The Managers shall sell sub-units for cash at a price per sub-unit equal to the value of the same calculated in the following manner:—

(a) the total of the market dealing offered prices on the London Stock Exchange of the securities comprised in the Trust Portfolio on the date of such issue shall be ascertained and have added thereto:

(i) an initial service charge of —— per cent. of the total so ascertained,

(ii) a sum which in the opinion of the Managers represents the purchase charges, commissions and duties payable in respect of such securities

(iii) Stamp Duty (if any) on the capital value of the trust.

(iv) a sum equal to the net accrued dividends on the securities comprised in the Trust Portfolio received (*b*) in the hands of the Trustees at the date of issue.

(b) The resultant figure being divided by the number of sub-units in issue or deemed to be in issue.

PROVISIONS CONCERNING CERTIFICATES

7. Every purchaser of sub-units from the Managers shall be entitled to a Certificate evidencing his title thereto. Such Certificate shall at the option of the purchaser be in the form

(*b*) In addition, dividends declared but not yet paid may be added.

of a Bearer Certificate or a Registered Certificate and if a Bearer Certificate shall be in the form set out in the Second Schedule hereto and have attached thereto all coupons to which the purchaser is entitled and if a Registered Certificate shall be in the form set out in the Third Schedule hereto.

8. The Trustees shall keep at their registered office a Register of the Holders of Registered Certificates showing the name and address of each Holder, the number of sub-units held by him and the distinctive numbers of his Certificates and the date of registration. Any change in the name or address of a Registered Holder shall be forwarded to the Trustees who on receipt of such evidence of such change as they might require shall register the change.

9. (i) The Register shall be open for inspection by the Managers or any Certificate holder without charge at all reasonable times during business hours

(ii) The Register may be closed by the Trustees from time to time but not for more than thirty days in any one year and the Trustees shall inform the Managers of such closure in time for the Managers to give notice thereof by advertisement in a leading London newspaper

(iii) No notice of any trust express implied or constructive in respect of any sub-unit shall be entered on the Register

10. The Managers and Trustees shall recognise the Registered Holder in the case of a Registered Certificate and the Holder of a Bearer Certificate and any coupons therefrom in the case of a Bearer Certificate as the absolute owner thereof and shall not recognise any other interest affecting such sub-unit unless ordered to do so by a court of competent jurisdiction.

11. A Certificate holder may by application in writing to the Trustees accompanied by the Certificate to be changed (and if a Bearer Certificate having attached thereto all coupons not then due) plus a fee of 1/– for each new certificate requested and a sum which in the opinion of the Managers represents any Duty or tax payable thereon have his Certificates changed

(i) from Bearer form to Registered form of the same denomination of sub-units and vice versa

(ii) for Bearer or Registered Certificates of any denominations totalling his holding.

TRANSFER AND TRANSMISSION

12. Sub-units shall be freely transferable by the holders thereof and in the case of sub-units on a Registered Certificate, a transfer shall be made by a common instrument of transfer, duly stamped, signed by the transferor and the transferee and forwarded to the Trustees at their registered office together with the Registered Certificate and a fee of 2s. 6d. The Trustees shall enter the transferee's name on the register and forward to him a new Certificate made out in the transferee's name for the sub-units comprised in the transfer. The transfer need not be by deed. The transferor shall be deemed to be the owner of the sub-units comprised in the transfer until the transferee's name is substituted on the Register by the Trustees. Any balance of sub-units not transferred by the transfer but remaining on the Certificate sent therewith to the Trustees shall be the subject matter of a new Certificate to be issued by the Trustees who shall retain the old Certificate.

13. On the death of one of joint holders of a sub-unit the survivor or survivors thereof and on the death of a sole holder his legal personal representatives shall be the only persons recognised by the Trustees and Managers as having any title to the sub-unit.

14. A person becoming entitled to a sub-unit in consequence of the death or bankruptcy of a holder may upon such evidence being produced as may from time to time properly be required by the Managers and Trustees elect either to be registered as holder of the sub-unit in which case he shall send the Trustees a notice in writing that he so elects or to transfer the sub-unit to another person and the Trustees may retain any moneys payable in respect of such sub-unit until such person is registered as holder of or validly transfers the same.

15. A person becoming entitled to a sub-unit in consequence of the death or bankruptcy of the holder as aforesaid shall be entitled to the same dividends and other advantages to which

he would be entitled if he were the registered holder of the sub-unit except that until he is registered as the holder of a sub-unit he shall not be entitled to receive notices of meetings of holders of sub-units or vote at any meeting thereof

DIVIDENDS

16. On 1st March and 1st September in every year there shall be distributed rateably to the holders of sub-units on Bearer or Registered Certificates and if the latter to the holders thereof registered on the immediately preceding 1st February or 1st August as the case may be all the net income arising out the Trust Fund received by the Trustees in the immediately preceding six months to be ascertained in the following manner:—

(a) All dividends and receipts in the nature of income arising from the Trust Portfolio and interest on cash in the Trust Fund which have come into the hands of the Trustees in the immediately preceding 6 months plus and minus where appropriate a sum equal to the dividend on a sale or purchase cum dividend of a security comprised in the Trust Portfolio at any time during such period less

(b) Trustees and Managers remuneration at the rate of —— per cent. and —— per cent. respectively of the average value of the Trust Fund during the immediately preceding six months such average value to be calculated by dividing the total of the mean values of all the securities comprised in the Trust Portfolio plus cash in the Trust Fund on each account day on the London Stock Exchange in the immediately preceding six months by the number of such account days.

17. The first dividend on every sub-unit issued at a price which includes such a sum as is mentioned in sub-clause 6 (a) (iv) above shall show (i) the amount of such dividend which is a repayment of the sum mentioned in such sub clause as a capital repayment and (ii) the remainder of the dividend as income.

18. All distributions shall be made by cheque or warrant prepared by the Managers and signed by or on behalf of the Trustees and in the case of Registered Certificates sent by post to the registered address of the holder thereof and where there

are joint holders to the first-named person on the Register and in the case of Bearer Certificates upon presentation and surrender of the appropriate coupon.

19. All dividends proceeds of sales of rights and other receipts which are deemed by the Managers after consultation with the Auditors to be in the nature of capital shall not be available for distribution while the Trust is a going concern but shall be added to the capital of the Trust Fund.

20. Every distribution to a holder of a sub-unit shall be accompanied by a tax declaration prepared by the Auditors of the Trust and approved by the Managers and Trustees showing what part (if any) of such distribution represents income and the rate and amount of taxes which have been deducted therefrom and what part (if any) represents a distribution of capital not liable to tax.

STATEMENTS

21. On 1st March and 1st September in every year or so soon thereafter as practicable the Auditors shall prepare and submit to the Trustees for their approval a statement of the matters set out below concerning the distribution made to holders of sub-units in respect of the preceding six monthly period showing:—

(a) in respect of each of the securities comprised in the Trust Portfolio the gross amount distributed the amount of tax (if any) deducted therefrom or paid thereon or whether the distribution was not taxable and the net amount received by the Trustees.

(b) all other cash received by the Trustees arising out of the Trust Fund the source thereof and whether in the nature of capital or income

(c) the expenses and remuneration of the Managers and Trustees paid during the said period and the provisions in the Deed authorising the same

(d) the net amount distributed showing both capital and income

(e) the securities and cash comprising a unit of the Trust Fund on the date of the statement

(f) the number of units in issue at that date

(g) the offered and bid prices of a sub-unit at that date

A copy of such statement approved by the Managers and Trustees shall be sent to every holder of a Registered Certificate and shall be forwarded to every holder of a Bearer Certificate requesting the same.

REALISATION OF SUB-UNITS BY HOLDERS

22. At any time during the period of this trust the holder of a sub-unit or sub-units may by notice in writing addressed to the Managers accompanied by his Certificates (Bearer Certificates having attached thereto all coupons not then due and Registered Certificates accompanied by a common instrument of transfer duly stamped and signed by the transferor) require the Managers either

(a) to purchase the number of his sub-units specified in the transfer in accordance with the provisions of clause 12 hereof or

(b) provided the number of sub-units specified in such notice is 5,000 or an exact multiple thereof alternatively (i) to pay and transfer to him cash and investments comprising a complete unit or units of the Trust Fund less the necessary expenses incident to such transfer or (ii) to sell the investments comprised in a complete unit or units of the Trust Fund on the London Stock Exchange and to pay to him the amounts so realised less the necessary expenses incident to such realisation together with the cash comprised in such unit or units.

23. The price per sub-unit at which the Managers undertake to purchase sub-units pursuant to the provisions of the preceding clause shall be calculated in the following manner:—

The total of the market dealing bid prices on the London Stock Exchange of the securities comprised in the Trust Portfolio at the date of the receipt by the Managers of the above mentioned notice shall be ascertained and (a) there shall be deducted from such total:

(i) a sum of —— per cent. of such ascertained total

(ii) a sum which in the opinion of the Managers represents the sale charges commissions and duties (if any) payable in respect of such securities

and (b) there shall be added thereto

(i) cash (if any) comprised in the Trust Fund and

(ii) a sum which in the opinion of the Managers represents the net dividends on the securities comprised in the Trust Portfolio which are in the hands of the Trustees on the aforementioned date

(c) the resultant figure being divided by the number of sub-units in issue or deemed to be in issue.

24. If part only of the sub-units comprised in a Certificate are required to be purchased by the Managers as aforesaid the Managers shall on payment of the Stamp Duty (if any) by the holder arrange with the Trustees to issue to the holder a Certificate for the balance of the sub-units.

MANAGERS TO PREPARE CERTIFICATES ETC.

25. All certificates coupons warrants cheques statements and notices in respect of sub-units shall be prepared by the Managers and forwarded to the Trustees in time for their satisfactory inspection and signed by or on behalf of the Trustees and delivered to the Managers or to their order on receipt by the Trustees of instructions in writing in that behalf given by Managers.

INVESTMENT

26. Subject to the provisions of the next following clause hereof the Managers shall undertake the responsibility for the investment of the cash in the Trust Fund and the composition of the Trust Portfolio and in furtherance of this undertaking may from time to time request the Trustees in writing to realise a named security in the Trust Portfolio or if there shall be sufficient cash in the Trust Fund to purchase for the Trust Portfolio any security authorised by this Deed for inclusion therein Provided always that nothing in this clause shall in any way restrict the right of the Trustees to decline to adhere

to such a request if the Trustees are of the opinion that they do not wish to hold such security whereupon the Trustees shall require the Managers to indicate another investment suitable to the Trustees.

27. A security selected by the Managers under the provisions of the above clause must be a security (a) quoted on the London Stock Exchange (b) fully paid up and not able to involve the Trustees in any financial liability (c) not issued by a company which wholly or principally derives its income from wasting assets. Nothing in this clause shall in any way restrict the Trustees' right to decline to hold any security in the Trust Fund which it thinks is in any way unsuitable for such purpose (*c*).

28. No security in the Trust Portfolio shall comprise more than $2\frac{1}{2}$ per cent. in value of the total value of the Trust Fund calculated at any time on the mean between the offered and bid prices on the London Stock Exchange for each security comprised in the Trust Portfolio plus the cash in the Trust Fund Provided nevertheless that if on any such valuation a security shall be found to exceed $2\frac{1}{2}$ per cent. in value of the value of the Trust Fund calculated in this manner on account of the appreciation or depreciation of prices on the London Stock Exchange the Trustees or Managers shall not be obliged to take any action or be subject to any liability in respect thereof.

29. Notwithstanding the above restriction on investment cash up to any amount comprised in the Trust Fund may be placed on deposit with any London clearing Bank or invested in any British Government securities.

VOTING RIGHTS

30. The voting rights and the powers of engaging in shareholders stockholders and debenture holders actions and meetings shall be exercised by the Managers And the Trustees shall when requested to do so in writing by the Managers in furtherance

(*c*) It is usual to place some restriction on the Managers' power of reinvestment of the Trust Portfolio. A common method is to have a comprehensive list of securities scheduled and to allow the Managers to invest only in such securities in substitution for the securities in the Portfolio. The draftsman does not think it advisable to restrict the

of this power execute powers of attorney and proxies to the order of the Managers. The Managers shall not be liable to any sub-unit holder or the Trustees for not exercising such voting or other rights.

REDUCTION OF TRUST FUND

31. The Managers may by notice in writing accompanied by the requisite Certificates totalling 5,000 sub-units or an exact multiple thereof and if Bearer Certificates having attached thereto all coupons not then due require the Trustees to reduce the Trust Fund by the proportion that the number of sub-units in such notice bears to the total number of sub-units then in issue or deemed to be in issue whereupon the Trustees shall (a) cancel such sub-unit Certificates and (b) sell the securities comprising one or more units as the case may be of the Trust Fund and together with the cash (if any) in such unit or units less all expenses incident to the realisation of such securities pay the resulting sum to the Managers.

RETIREMENT AND REMOVAL OF MANAGERS

32. The Managers may voluntarily retire and be replaced by other managers acceptable to the Trustees by means of a Deed supplemental hereto and entered into by the Trustees and such new managers.

33. The Trustees may remove the Managers by notice in writing on the happening of any of the following events:—

(i) if a receiver is appointed of any of the assets of the Managers

(ii) if the Managers go into liquidation otherwise than for the purposes of a reconstruction or amalgamation the provisions of which have been previously approved by the Trustees in writing

(iii) if the Trustees are of the opinion that for any reason it is in the interests of the sub-unit holders that the Managers

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Managers' power of investment any more than is absolutely necessary. In a fluid economy such as the present such restrictions hamper the agility of the Managers to adapt the Portfolio to the Market without giving any compensating gain of security of capital value of the sub-units to the holders thereof.

should retire whereupon if the Managers dispute the matter it shall be brought before a meeting of the sub-unit holders held in accordance with the provisions of the Fourth Schedule hereto and if such meeting shall not approve of the Managers remaining in office by a 75 per cent. majority the Managers shall be deemed to be thenceforth removed

(iv) if the holders of more than 75 per cent. of the sub-units decide at any meeting held in accordance with the provisions of the Fourth Schedule hereto to give notice in writing to the Managers removing them from office.

RETIREMENT OF TRUSTEES

34. The Trustees shall retire voluntarily only if a new trustee or trustees acceptable to the Board of Trade as a trustee or trustees of an authorised unit trust scheme is or are validly appointed by the Managers to take their place.

TERMINATION OF THE TRUST

35. The Trust shall terminate (*d*) on the —— 19— if not terminated pursuant to the following provisions hereof before that date.

36. The Trustees may terminate the Trust on the happening of the following events:—

(a) if the Managers shall go into liquidation otherwise than for the purposes of a reconstruction or amalgamation the provisions of which have been previously approved by or on behalf of the Trustees in writing

(b) if the Managers cease to act independently or fail to abide by the provisions of this Deed or fail to perform the duties required of them in a manner reasonably satisfactory to the Trustees Provided nevertheless that in case of disagreement between the Managers and Trustees on the application of this clause the matter shall be referred to the President for the time

(*d*) The perpetuity period restricts the period of the Trust to 21 years. Provision is often made in a Deed for an extension of this period by means of a Supplemental Deed. It could be argued that the perpetuity period does not apply to the absolute vested interest of the sub-unit holders.

being of the Law Society or to some person appointed by him for determination and such determination shall bind both Managers and Trustees.

37. Subject to the provisions of the next following clause on the termination of the Trust and within a reasonable time thereof the Trustees shall realise all the investments comprised in the Trust Portfolio and shall distribute the sum so realised less the expenses of realising the same together with the cash comprised in the Trust Fund rateably among the holders of sub-units in issue or deemed to be in issue in exchange for their sub-units Certificates.

38. One month prior to the determination of the Trust or immediately the Trustees determine the Trust they shall give notice to every registered holder of sub-units and by advertisement in a leading London newspaper that holders of 5,000 sub-units or an exact multiple of 5,000 may by notice in writing addressed to the Trustees accompanied by the requisite Certificates require the Trustees to pay and transfer to him the cash and investments comprised in a complete unit or units as the case may be of the Trust Fund less the necessary expenses incident to such transfer.

TRUSTEES MAY ACCEPT CASH ON DEPOSIT

39. The Trustees (being a Bank) may receive cash comprised in the Trust Fund on deposit and may enter into any banking transaction with the Managers or holders of sub-units and charge for the same.

MODIFICATION OF TRUST DEED

40. This Deed may be modified by any Deed supplemental hereto entered into by the Managers and Trustees Provided that if such modification shall vary or prejudicially affect the rights of the sub-unit holders such modification shall not be valid unless and until it shall be sanctioned by a 75 per cent. majority at an Extraordinary General Meeting of the sub-unit holders held pursuant to the provisions in that behalf in the Fourth Schedule hereto and no modification shall be valid which attempts to

impose any financial liability on a holder in respect of his sub-unit other than the purchase price calculated in accordance with clause 6 hereof.

41. The provisions of this Trust Deed and any Trust Deed supplemental hereto made pursuant to the provisions in that behalf contained herein shall bind all the Certificate holders and persons claiming through them as if they had been parties to such Deed or Deeds.

42. A copy of this Trust Deed and any Trust Deed supplemental hereto shall be available for inspection at the Head Offices of the Managers and the Trustees during the usual business hours and shall be supplied to any applicant on payment of 2s. 6d. per document.

In witness *etc.*

The First Schedule above referred to
(Securities comprising initial Portfolio)

The Second Schedule above referred to
(Form of Bearer Certificate and coupon attached thereto)

The Third Schedule above referred to
(Form of Registered Certificate)

The Fourth Schedule above referred to
(Provisions for meetings of sub-unit holders)

FORM 18

Deed for Dissolution of a Partnership.

AB and CD being the surviving partners and also executors of a deceased partner and the widow of the deceased partner having a life interest and joining in to consent to a winding up of the partnership affairs.

(*Drafted by Peter Elman, Esq., of Middle Temple*)

THIS DEED made the —— day of —— 19— BETWEEN AB of —— of the first part CD of —— of the second part the said AB and the said CD as Executors of —— deceased (hereinafter called "the Trustees") of the third part —— (hereinafter called "the Widow") of the fourth part and —— of —— (hereinafter called "the Liquidator") of the fifth part

WHEREAS:—

(1) The said AB and CD and the late —— have for some years carried on in partnership in equal shares the business of —— under the name of —— at —— (hereinafter called "the Partnership")

(2) The said —— died on —— having by his Will dated —— appointed the Trustees and —— to be the Executors and Trustees thereof and the said Will was duly proved by the Trustees in the Principal Probate Registry on —— the said —— having predeceased the Testator and the said —— having renounced Probate

(3) By his said Will the said —— directed that in respect of his share and interest in the Partnership the Trustees should continue the business of the Partnership until the death of his widow upon the terms and subject to the conditions therein mentioned and contained and accordingly the Trustees have so carried on the Partnership with the said AB and the

said CD since the date of death of the said —— on the same terms as those subsisting prior to the said death of the said ——

(4) The assets property and effects of the Partnership now comprise the stock-in-trade and fixtures and fittings now in upon or about the Partnership premises at —— and the several debts moneys and credits owing or belonging to the Partnership or otherwise as appears from the books of account of the Partnership at the date hereof

(5) The said AB and CD and the Trustees (hereinafter together called "the Partners") with the consent of the Widow testified by her execution of this Deed have agreed to dissolve and wind up the affairs of the Partnership subject nevertheless to the provisions and covenants hereinafter expressed and contained

NOW THIS DEED made in pursuance of the said agreement and for the purpose of effectuating the same WITNESSETH as follows:—

1. The Partnership shall be deemed to have been dissolved by mutual consent from the date hereof

2. The Partners hereby appoint the Liquidator to be the Receiver and Manager of the business of the Partnership for the purpose of winding up the same in accordance with the terms and subject to the conditions hereinafter contained

3. The Liquidator shall forthwith advertise or cause to be advertised notice of dissolution of the Partnership in the London Gazette and serve or cause to be served a similar notice upon all persons who are or have been customers of the Partnership

4. The Partners do and each of them doth hereby appoint the Liquidator to be the attorney of them and each of them and the Partnership and in the names or name of them and each of them and the Partnership or otherwise as may be necessary and proper to do the following acts deeds and things or any of them:

(a) To collect the assets property and effects of the Partnership and to demand sue for enforce payment of and receive and to sign and give full and effectual receipts and discharges

for all and each of the several debts money and credits and all other effects of or due or owing or in anywise belonging to the Partnership and to settle all accounts matters and things whatsoever relating thereto and to compound or accept payment in lieu of or in satisfaction for the whole of or compromise or release any debt or claim belonging to the Partnership upon such terms as the Liquidator may think fit

(b) To sell and dispose of the assets property and effects of the Partnership either together or in lots and either by public auction or private contract and subject to such conditions and in such manner in all respects as to the Liquidator shall seem fit to any person or persons for such price or prices as can reasonably be obtained for the same and to do all such acts deeds and things as may be requisite for assigning and making over the said assets property and effects and all the right and interest of the partners therein and thereto to the purchaser or respective purchasers of the same and to sign and give to such purchaser or purchasers a full and effectual receipt or receipts for his or their purchase money or respective purchase moneys

(c) To pay satisfy and discharge all the debts and liabilities accrued or accruing and outstanding of the Partnership so far as the same shall reasonably come to the knowledge of the Liquidator or such as he shall in his judgment consider to be legally due and owing

(d) To stand possessed of the net surplus of the moneys of the Partnership and the proceeds of the sale of the assets property and effects thereof after all such payments as aforesaid have been made thereout (i) to reimburse and pay himself all such costs charges expenses and outgoings as he shall or may bear sustain or expend in or about the winding up of the Partnership hereunder together with his remuneration as receiver and manager hereinafter provided for and subject thereto (ii) in trust for the Partners in the amounts and proportions to which they respectively shall be found to be entitled on the taking and completion of the final accounts of the

Partnership hereinafter provided for and otherwise in accordance with the provisions of the Partnership Act 1890

(e) For the purpose of the beneficial winding up of the Partnership but no further to carry on for so long as he shall think fit the business of the Partnership with the present assets property and effects thereof and for that purpose to engage and employ such agents and servants and upon such terms and conditions as he may consider necessary and proper and in particular without derogating from the foregoing to engage and employ the said —— as a manager at a salary not exceeding £—— a week

(f) Generally to act as the attorney of the partners and each of them and in all other matters relating to and necessary or proper to be done for the purpose of completely winding up the Partnership and for that purpose to execute and do all necessary deeds instruments acts and things as fully and effectually in all respects as the Partners or each or any of them could do.

5. Each of the Partners hereby ratifies and confirms and agrees to ratify and confirm all and whatsoever the Liquidator shall lawfully do or purport to do or cause to be done under and by virtue of this Deed.

6. The Partners do and each of them doth declare that the power of attorney hereinbefore given shall be irrevocable for one year from the date hereof.

7. The Partners and each of them hereby jointly and severally covenant with the other or others of them and with the Liquidator in manner following that is to say:—

(a) The Partners and each of them shall at all times give to the Liquidator all such information and assistance as it may be in their or his power to give in relation to the Partnership to enable the winding up thereof to be carried into full effect in accordance with the provisions hereof and will not in any way obstruct the Liquidator in the exercise or performance of his powers and duties hereunder

(b) The Partners and each of them shall forthwith deliver and hand over to the Liquidator or as he shall direct all the books of account and other books and papers letters instruments

bills bonds notes and other securities and writings whatsoever concerning the business dealings transactions and affairs of the Partnership which at the date hereof are or shall hereafter come to or be in their or his hands custody or power and the same shall remain in the custody and control of the Liquidator until the Partnership is fully wound up and for three months thereafter and upon the expiration of the said three months shall be disposed of and dealt with as the Partners shall decide

(c) The Partners and each of them and their or his authorised agents and representatives shall be at liberty at all reasonable times to have access to and to inspect and copy and take extracts from any of the said books of account and other books letters instruments bills bonds notes and other securities and writings

(d) The Partners and each of them will not at any time hereafter except with the previous consent in writing of the Liquidator and subject to such conditions contained in such consent contract any debt or obligation which can or may charge or affect the assets property and effects of the Partnership or any part thereof or except and subject as aforesaid receive discharge compound or compromise any of the debts or claims belonging to the Partnership or do any other act or thing whereby the winding up of the Partnership may be impeached delayed prejudiced or otherwise affected

(e) The Partners and each of them shall execute all such deeds and documents and do all such acts and things as may be necessary or be deemed expedient to give complete effect to the provisions of this Deed and to the winding up of the Partnership

(f) The Partners and each of them shall so far as may be necessary pay discharge and satisfy out of their or his own moneys all demands claims and liabilities for income tax surtax and death duties arising in respect of their or his share in the profits assets property and effects of the Partnership and in the winding up thereof and so that the same shall not be

chargeable upon or become payable out of the funds of the Partnership

8. Upon completion of the winding up of the Partnership the Liquidator shall cause to be taken and prepared a true and full account of the winding up by an independent and duly qualified accountant to be selected by him and such account when certified by such accountant shall be conclusive and final among the parties hereto as to all matters relating to the winding up of the Partnership unless some manifest error shall be discovered within one month after such certification in which case such error shall be rectified

9. The Liquidator shall be paid out of the funds of the Partnership and shall be entitled to deduct therefrom as aforesaid all usual and proper charges as remuneration for his services hereunder

10. The Liquidator shall not be answerable or accountable for any loss or misapplication which may happen in or about the exercise of his powers or duties hereunder nor for the default or negligence of any banker broker or other person with whom any of the partnership property may be lodged or deposited for safe custody or of any agent or servant engaged and employed by him hereunder

11. The Partners and the Widow hereby jointly and severally covenant with the Liquidator that they and each of them will at all times hereafter indemnify and keep indemnified the Liquidator and his estate and effects from and against all costs expenses claims demands actions and proceedings which may or might be made or arise in connection with the winding up of the Partnership any part thereof or anything done or omitted to be done by the Liquidator in or about such winding up

12. None of the Partners shall bring any action or take any proceedings against the other or others of them in reference to the affairs of the Partnership or the winding up thereof Provided that this provision shall not prejudice the right of any party hereto to enforce the performance of all or any of the provisions of this Deed.

13. The costs of the preparation drafting stamping and execution of this Deed shall be deemed to be expenses incurred in the winding up of the Partnership and shall be paid and satisfied accordingly.

14. If any doubt question or dispute shall at any time hereafter arise between the parties hereto touching the construction of this Deed or any clause matter or thing herein contained or relating to the winding up of the Partnership and such doubt question or dispute shall not within one month from the time when the same shall have arisen be decided settled and agreed by and between the said parties the same shall be referred to a single arbitrator to be appointed by the President of the Institute of Chartered Accountants under the provisions of the Arbitration Act 1950 or any statutory modification or re-enactment thereof for the time being in force.

IN WITNESS, *etc.*

FORM 19

Form of Building Contract where no Architect is employed and where the Contract Sum is Fixed and is to be provided by a Mortgagee and paid by fixed instalments as the work proceeds.

Parties. AN AGREEMENT made the —— day of —— 19— BETWEEN AB of *etc.*, (hereinafter called "the Employer") of the one part and CD acting for and on behalf of XY BUILDERS of *etc.*, (hereinafter called "the Contractor") of the other part

Recitals. WHEREAS:—

(1) The Employer is desirous of constructing a house and garage at —— in the County of —— (hereinafter called "the Works")

(2) Drawings and a Specification (hereinafter respectively referred to as "the Contract Drawings" and "the Specification") showing and describing the work to be done have been signed by or on behalf of the parties hereto

(3) The Contractor has made an estimate of the sum which he will require for carrying out and completing the Works namely the sum of £——

NOW IT IS HEREBY AGREED AS FOLLOWS:—

Contractor to complete Works. 1. The Contractor will for the consideration hereinafter mentioned execute and complete the Works in a sound proper and workmanlike manner in accordance in all respects with the Contract Drawings and the Specification and subject to the Conditions annexed hereto numbered 1–17.

Employer to pay for Works. 2. The Employer will pay to the Contractor the said sum of £—— or such other sum or sums as shall become payable hereunder at the times and in the manner specified in the said Conditions

Incorporation of Conditions. 3. The said Conditions the Contract Drawings and the Specification shall be read and construed as forming part of this Agreement

AS WITNESS, *etc.*

THE CONDITIONS HEREINBEFORE REFERRED TO

Dates for commencement and completion of Works.

1. On or before the —— day of —— 19— the Employer shall give the Contractor possession of the site of the Works (hereinafter referred to as "the site") and the Contractor shall thereupon begin the Works forthwith and diligently proceed with the same and subject to the provisions of condition 3 hereof shall complete the same on or before the —— day of —— 19—.

Bonus for early completion and damages for late completion.

2. If the Works shall be completed either before or after that date stated in condition 1 hereof then the following provisions shall have effect:—

(a) If the Contractor shall complete and deliver over the Works to the Employer before the said date the Employer shall pay to the Contractor the sum of £—— in respect of each full week that the Works shall be so completed before the said date;

(b) If the Works shall not be completed by the said date or within any extended time provided for by the provisions of condition 3 hereof and the same ought reasonably to have been so completed the Contractor shall pay or allow to the Employer the sum of £—— as liquidated damages in respect of each full week of the period during which the Works shall so remain or have remained incomplete and the Employer may deduct such damages from any moneys otherwise payable to the Contractor under this contract.

Extension of time.

3. If the Works or any part thereof shall be delayed:—

(a) by force majeure, or

(b) by reason of any exceptionally inclement weather, or

(c) by reason of any such loss or damage by fire as is referred to in condition 10 hereof, or

(d) by reason of instructions given by or on behalf of the Employer for the execution of extra work,

then in any such case and as often as the same shall happen the Employer shall make a fair and reasonable extension of time for completion of the Works.

Extras.

4. The Employer may from time to time issue instructions in regard to the variation or modification of the design quality or quantity of the Works or the addition or omission or substitution of any work and if such instructions shall be in writing and signed by the Employer and if compliance therewith shall involve the Contractor in loss or expense beyond that provided for in or reasonably contemplated by this contract then unless such instructions shall have been issued by reason of some breach of contract by the Contractor the amount of such loss or expense shall be ascertained and shall be added to the contract sum.

Foreman's Supervision.

5. The Contractor shall at all times during the execution of the Works keep a competent general foreman on the site.

Power to appoint Architect or Surveyor.

6. The Employer may at any time during the progress of the Works call in at his own expense an architect or surveyor and from and after the date of such calling in references in the Contract and in these Conditions to "the Employer" shall be construed to include any such architect or surveyor.

Making good defective work.

7. If within a period of [six] calendar months from the actual date of delivery of possession of the Works to the Employer any defects of any kind shall appear and shall be due to a failure to comply in any respect with the terms of this contract or to frost occurring before completion of the Works such defects shall within a reasonable time after receipt of the Employer's written request in that behalf be made good by the Contractor at his own cost.

Prohibition against assignment.

8. The Contractor shall not without the consent in writing of the Employer first had and received assign this Contract.

Liability of Contractor.

9. The Contractor shall be solely liable for and shall indemnify the Employer in respect of all losses claims demands actions or proceedings whatsoever arising under any statute or at common law in respect of:—

(a) personal injury to or the death of any person arising out of or in the course of or caused directly or indirectly by the execution of the Works or any part thereof unless such injury or death shall be due to any act or neglect on the part of the Employer;

(b) any injury or damage of whatsoever kind to any property real or personal arising out of or in the course of or caused directly or indirectly by the execution of the Works or any part thereof unless the same shall be due to any act or neglect on the part of the Employer.

Liability of Contractor to insure.

10. (a) Without prejudice to the Contractor's liability to indemnify the Employer under condition 9 hereof the Contractor shall effect such insurances as may be specified in the Specification and shall pay all premiums and sums of money necessary for such purpose and if and as often as he shall be required so to do by the Employer the Contractor shall produce all relevant policies and premium receipts in respect of such policies and if the Contractor shall make default in producing any such policies or receipts the Employer may insure against any risk with respect to which such default shall have been made and may deduct all sums paid as premiums from any moneys due or to become due to the Contractor.

(b) The Contractor shall upon settlement of any claim made under the policies aforesaid or any of them proceed with due diligence to rebuild or repair any damage to the Works in respect of which such settlement may have been made and all moneys received or payable in respect of loss or damage to the Works or any part thereof shall be paid to the Employer and paid over to the Contractor in instalments as the work of re-instatement proceeds at the rate of [*£100*] for every [*£100*] worth of work done but the Contractor shall not be entitled to receive any payment in respect of the said re-instatement other than or beyond the moneys received or payable under the said policies.

Employer's power to determine contract.

11. If the Contractor shall:—

(a) Fail to commence the Works at the time and in the manner required by these Conditions, or

(b) Fail to proceed with the Works with reasonable diligence, or

(c) Fail to execute the Works or any part thereof according to the Contract Drawings and the Specification and these Conditions, or

(d) Abandon this contract,

and if the Contractor shall continue or persist in any such failure or abandonment for a period of 14 days after notice in writing specifying the same shall have been sent to the Contractor by registered post the Employer may without prejudice to any other rights or remedies forthwith by notice by registered post sent in that behalf determine this contract Provided that the power conferred upon the Employer by this condition shall not be exercisable if at the time of sending any such notice the Employer shall be in breach of this contract.

Provision for determination of contract on contractor's bankruptcy.

12. In case the Contractor shall become bankrupt or insolvent or shall commit an act of bankruptcy [*or enter into liquidation whether compulsory or voluntary except liquidation for the purpose of reconstruction or amalgamation*] the Employer may without prejudice to any other rights or remedies by notice served upon the Contractor in that behalf determine this contract.

Effect of determination under Conditions 11 and 12.

13. If the Employer shall in the exercise of the power so to do contained in Condition 11 or Condition 12 hereof determine this contract then and in any such case the following provisions shall take effect:—

(1) The Employer may employ and pay any workmen or other persons to carry out and complete the Works and may use all materials temporary buildings and plant then on the site and may purchase all materials necessary for the purpose;

(2) The Contractor shall if so required by the Employer assign to the Employer without payment the benefit of any contract or contracts he may have made with any person or persons firm or corporation for the supply of any materials or for the execution of any of the works;

(3) The Employer may deduct the additional cost of any materials so purchased and/or of completing the Works or any part thereof from any sums which may be then or may thereafter become due to the Contractor or may recover from the Contractor as liquidated damages the extra cost, if any, of the said materials and/or of

completing the Works or any part thereof over and above the amount which would have been payable to the Contractor if the contract had not been determined as aforesaid.

Contractor's power to determine contract.

14. If the Employer shall become bankrupt or shall commit an act of bankruptcy or shall fail to pay the amount of any instalment within the time mentioned in Condition 15 hereof the Contractor may without prejudice to any other rights or remedies (unless he is indebted to the Employer under the terms of this contract) by notice sent by registered post in that behalf determine this contract and shall thereupon be entitled to recover from the Employer as liquidated damages any loss or damage caused to the Contractor owing to such determination.

Provision for stage payments.

15. The contract sum shall become payable by the Employer to the Contractor in the instalments at the stages of construction of the Works and in the manner following that is to say:—

(1) At Damp Proof Course Level the sum of £——;

(2) At First Floor Joist Level the sum of £——;

(3) At Eaves Level the sum of £——;

(4) At Roofed-in stage the sum of £——;

(5) At Plastered stage (internally and externally) the sum of £——;

(6) On completion of the Works the balance of all moneys due under this contract.

Provided that an instalment shall not become payable hereunder unless and until the following conditions in regard to any particular stage of construction of the Works shall have been satisfied that is to say:—

(i) All work usually regarded in the Building trade as being required or appropriate to complete any particular stage of construction shall have been carried out in accordance with this contract, and

(ii) The Employer's Mortgagee, the Z Building Society, shall be satisfied that the work of construction to the relevant stage has been satisfactorily completed.

After an instalment shall have become payable in accordance with the provisions hereof the Employer shall pay the amount thereof to the Contractor within a period of 14 days from the same becoming so payable.

16. Upon notice in writing served by the Contractor on the Employer in that behalf the Employer will as soon as practicable after the receipt of any such notice use his best endeavours to procure his said Mortgagee to make or cause to be made all necessary inspections of the Works or any part thereof for the purposes of sub-clause (ii) of the Proviso to Condition 15 hereof and will pay all fees and charges demanded by the said Mortgagee in respect of all such inspections.

Arbitration

17. In case any dispute difference or question shall arise between the Employer and the Contractor either during the progress or after the completion or abandonment of the Works as to the construction of this contract or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith (including any matter or thing which is left by this contract to be ascertained by reference to the standards of reasonableness) then either party shall forthwith give to the other notice in writing of such dispute difference or question and such dispute difference or question shall be and is hereby referred to the arbitration and final decision of a person to be appointed on the request of either party by [the President of the Law Society for the time being] and the award of such Arbitrator shall be final and binding on the parties.

FORM 20

Agreement between Mortgagors (by deposit of deeds) and a Surety (who has provided Collateral Security) whereby the Mortgagors agree to indemnify the Surety and to grant him a legal mortgage in the event of his discharging the outstanding mortgage moneys (*a*).

THIS AGREEMENT under seal is made the —— day of —— 19— BETWEEN AB of *etc.* and CD of *etc.* (hereinafter called "the Principals") of the one part and EF of *etc.*, (hereinafter called "the Surety") of the other part

WHEREAS:—

(1) By a Memorandum of Deposit accompanied by a deposit of title deeds made the —— day of —— 19— by the Principals in favour of the X Bank Limited (hereinafter called "the Bank") the Principals (*inter alia*) (a) agreed with the Bank on demand in writing made to the Principals to pay to the Bank the balance which on the account of the Principals with the Bank should for the time being be due and owing to the Bank in respect of all moneys therein more particularly mentioned and (b) charged by way of equitable mortgage certain freehold property therein more particularly described (hereinafter called "the said freehold property") with the payment of all moneys thereby covenanted to be paid to the Bank

(2) The Surety at the request of the Principals has also deposited with the Bank certain other title deeds relating to certain freehold property vested in the Surety and has agreed with the Bank on demand in writing made to the Principals and the Surety or either of them to pay to the Bank the balance which on the said account of the Principals with the

(*a*) The agreement should be executed under seal and by reason of the provisions of sub-clause (2) of clause 2, the agreement should be duly protected by registration as a land charge.

Bank should for the time being be due and owing to the Bank as aforesaid (which deposit and agreement is hereinafter referred to as "the said deposit and agreement")

(3) In consideration of the Surety having made the said deposit and agreement as aforesaid the Principals have agreed to give such indemnity and security to the Surety as is hereinafter contained

Now in pursuance of the said agreement THIS DEED WITNESSETH that the Principals do and as a separate covenant each of the Principals doth respectively hereby covenant with the Surety as follows:—

1. The Principals and each of them and their respective personal representatives will at all times hereafter keep the Surety and his personal representatives indemnified and saved harmless against all liability arising under or in respect of the said deposit and agreement and all actions proceedings claims damages costs and expenses whatsoever in relation thereto

2. If at any time or times hereafter the Bank or their successor in title shall call upon the Surety to pay the whole or any part of the money for the time being secured by the said deposit and agreement the Surety shall thereupon be entitled to pay to the Bank or other person entitled to receive the same the whole of the moneys which shall then remain secured as aforesaid and upon making such payment as aforesaid and without prejudice to any other rights or remedies which the Surety may have under this agreement or otherwise the following provisions shall have effect:—

(1) The provisions of clause 1 hereof shall apply to such payment whether or not the Surety was legally bound to pay the whole amount thereof

(2) The Principals shall if required so to do by the Surety at any time before the expiration of 21 years after the death of the last survivor of the descendants now living of His Late Majesty King George the Fifth and at the cost of the Principals execute and deliver to the Surety a first legal charge of the freehold property for securing the repayment of all moneys which the Surety may have paid under the provisions hereof

and of all other moneys in respect of which the Surety may be entitled to be indemnified by the Principals under the provisions hereof with interest on all the said moneys at the rate of £6 per cent. per annum and the said legal charge shall be in such form and contain such provisions as the Surety may reasonably require

In this clause where the context so admits the expression "the Principals" shall include their successors in title and personal representatives and the expression "the Surety" shall include his personal representatives assigns and successors.

IN WITNESS, *etc.*

FORM 21

Agreement between a Private Company, its Shareholders and a second Company whereby the Private Company capitalises part of its reserves and pays up a Debenture which it is agreed shall be allotted to the second Company who shall pay the Private Company's Shareholders therefor.

(Drafted by Douglas Barker, Esq., of Lincoln's Inn)

THIS AGREEMENT is made the —— day of —— 1956 BETWEEN *A. Company Limited* whose registered office is situate at —— *etc.* (hereinafter called "A.Co.") of the first part *B. Company Limited* whose registered office is situate at —— *etc.* (hereinafter called "B.Co.") of the second part *L.M.N.* of —— *etc.* Managing Director of A.Co. (hereinafter called "Mr. N.") of the third part *O.P.N.* wife of Mr. N. and Director of A.Co. (hereinafter called "Mrs. N.") of the fourth part

WHEREAS:—

(1) A.Co. is a private company with a nominal capital of £20,000 of which £10,000 and no more has been issued divided into 10,000 Ordinary Shares of £1 each fully paid held as to 5,000 of such shares by Mr. N. and as to the remaining 5,000 of such shares by Mrs. N.

(2) The Articles of Association of A.Co. incorporate Table "A" in the First Schedule to the Companies Act 1929 with such variations as are more particularly set out in the said Articles and such Articles as varied contain no power enabling A.Co. to capitalise its reserves or any of them.

(3) A.Co. desires to capitalise the sum of £5,000 now standing to the credit of its Profit and Loss Account and to pay up in full a £5,000 6½ per cent. Second Mortgage Debenture in the form and subject to the conditions set out in the Schedule hereto (hereinafter called "the Second Debenture") for the benefit of the persons who would be entitled thereto if such sum had been distributed by way of dividend.

(4) Mr. N. and Mrs. N. are together the only persons who will be entitled to the Second Debenture on a capitalisation by A.Co. as aforesaid and they desire to sell and B.Co. desire to purchase such Second Debenture for the sum of £5,000.

(5) A.Co. has given to the Y. Bank Limited a floating first charge over all of its assets to secure overdraft facilities up to £10,000.

NOW THIS DEED WITNESSETH and it is hereby mutually covenanted and agreed by and between the said several parties hereto as follows:—

Alteration of Articles to give power to capitalise

1. A.Co. shall within seven days from the date hereof alter its Articles of Association to include the following new Articles

[*insert Capitalisation Articles from Table "A" 1948 see Articles 128 and 129*]

Capitalisation.

2. Within seven days from the date of the above-mentioned alteration of the Company's Articles of Association A.Co. shall capitalise the sum of £5,000 (*a*) standing to the credit of its Profit and Loss Account and shall apply the same in paying up in full the Second Debenture for the benefit of Mr. N. and Mrs. N. and immediately thereafter A.Co. shall constitute a Second Mortgage Debenture Redemption Reserve and transfer thereto the sum of £5,000 from A.Co.'s General Reserve.

Covenant by shareholders.

3. Mr. N. and Mrs. N. and each of them respectively covenant to exercise all voting and other rights vested in them as holders of the said shares in A.Co. and as Directors thereof to ensure so far as they are able the due fulfilment by A.Co. of the covenants contained in the two preceding clauses hereof.

Debenture issued directly to purchaser.

4. Mr. N. and Mrs. N. respectively hereby direct A.Co. to issue the Second Debenture to which they shall together become entitled in pursuance of the provisions of clause 2 hereof in the name of "B. Company Limited" to B.Co. and B.Co. agrees to accept the same and thereupon immediately to pay therefor the sum of £5,000 to the said shareholders in the following proportions: £2,500 to Mr. N. and £2,500 to Mrs. N.

(*a*) If the sum capitalised exceeds £10,000, the consent of the Capital Issues Committee is necessary to the capitalisation.

and Mr. N. and Mrs. N. agree to accept the same in full satisfaction for the Second Debenture.

Covenant not to borrow in excess of £10,000.

5. A.Co. shall not borrow or in any way charge its assets to secure outstanding debts in excess of £10,000 excluding the sum secured for the time being by the Second Debenture except in accordance with the provision in that behalf contained in the Company's Articles of Association.

Debenture holder's right to appoint Director.

6. From time to time and for so long as B.Co. are the registered holders of the Second Debenture or any Debentures issued in substitution therefor or hold 10 per cent. or more of the issued ordinary share capital or ordinary stock (if any) of A.Co., B.Co. shall have the right to appoint a Director to the Board of A.Co. The Director so appointed shall hold office for such period as B.Co. shall indicate at the date of his appointment or until B.Co. shall require him to retire or substitute another Director for him and during the period such appointee shall be on the Board A.Co. shall pay him at the rate of £250 p.a. by equal quarterly instalments on the usual quarter days provision being made for the payment of an apportioned part thereof in respect of any broken quarters.

THE SCHEDULE ABOVE REFERRED TO

6½ per cent. Mortgage Debenture

IN WITNESS, *etc.*

FORM 22

Scheme for selling freehold flats in a small block (*a*).

(*Drafted by E. H. Bodkin, Esq., of Lincoln's Inn*)

I. TRANSFER OF UPPER FLAT. VARIATIONS FOR TRANSFERS OF THE FLATS WHICH INCLUDE THE FORECOURT, ROOF, ENTRANCE, STAIRCASE AND LIFT RESPECTIVELY

H.M. Land Registry
Land Registration Acts, 1925 and 1936
County: ——
Title No.: ——
Property: ——

—— day of —— 19—

THIS TRANSFER is made between A of etc. (hereinafter called "the Vendor") of the one part and B. of etc. (hereinafter called "the Purchaser") of the other part Parties.

(*a*) The scheme intended to be carried out by these Precedents is suitable only for a small block of flats, or a converted building, where each flat requires a right of subjacent and lateral support or protection from the others, and where the Vendor's liability can be made to cease on the transfer of the last of the flats.

The burden of the positive covenants by the respective purchasers probably cannot be made to run with the land directly, though they may perhaps do so as being annexed to the servient tenements of the mutual easements of support, etc. The scheme is shortly that each purchaser and his successors in title to the fee simple from time to time shall execute a deed of mutual covenants. It is realised that there may be difficulty in enforcing such execution, even though any future purchaser will incur a serious risk by not executing the Deed of Covenant; and for this reason it is sought as further security to create a scheme for the mutual protection of the purchasers somewhat on the lines of *Morland* v. *Cook*, L.R. 6 Eq. 252 as interpreted in *Austerberry* v. *Oldham Corporation* 29 C.D. 750. The liability of the purchasers *inter se* for repair is secured by annual rentcharges representing the cost of repairing each flat so far as necessary for the protection of the others, these rentcharges

Recitals: scheme of conversion.

WHEREAS:—

(1) The Vendor has converted the building known as —— Court in the County of —— (being the property comprised in the above title) into —— flats (which are hereinafter referred to as "the flats" and each of which is referred to as "a flat") and intends to sell and transfer the same under a building scheme under which the respective purchasers shall (so far as the law permits) be bound by the restrictive and other covenants contained in a Deed of Covenant already prepared and intended to bear even date with but to be executed after this Transfer [dated the —— day of —— 19—] and expressed to be made between the several persons who have signed their names and affixed their seals in the First Schedule thereto and the persons who shall hereafter do so (being the purchasers of the flats and their successors in title from time to time to the fee simple therein) of the one part and the Vendor of the other part to the intent that the owner of each of the flats shall be able to enforce the observance and performance of the said covenants by the owners and occupiers of the other flats and it is intended that the Vendor shall sell all the flats on the terms that the respective purchasers thereof shall execute the said deed of Covenant and be bound by the said covenants

Sale of other flats.

[(2) The Vendor has sold and transferred to the persons who have executed the said Deed of Covenant flats Nos. —— and ——]

Agreement for sale.

(3) The Vendor has agreed with the Purchaser for the sale to him of the flat numbered —— in —— Court aforesaid for the sum of £X upon the terms hereinafter contained

Intention to execute Deed of Covenant.

(4) It is intended that immediately after the execution of this Transfer the Purchaser shall execute the said Deed of Covenant

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not being payable in any year in which the obligation to repair is performed. It appears that the rentcharges would not be barred under the Limitation Act, 1939, so long as the repairs were done. But anyhow this can be prevented by obtaining an acknowledgment in writing by the owner liable when repairs are needed for which he is liable. In any case all the original purchasers will remain personally liable on the covenants. Where there are only a few flats, it is thought that the scheme will prove workable; and in any case the Vendor will be released from liability when he has sold the last flat.

NOW THIS DEED WITNESSETH as follows:—

Transfer of flat.

1. IN pursuance of the said agreement and in consideration of the sum of £X on or before the execution hereof paid by the Purchaser to the Vendor (the receipt and payment whereof the Vendor hereby acknowledges) the Vendor AS BENEFICIAL OWNER hereby transfers to the Purchaser ALL THAT [piece or parcel of land shown on the plan hereto annexed and coloured —— TOGETHER with] the flat numbered —— and being on the first [ground] floor of —— Court aforesaid from the joists of the floor upwards and the outside walls from that level upwards but not including the roof [from the foundations up to and including the joists of the floor or flat above the same] (the internal walls separating the flat from each adjoining flat being party walls severed medially) being part of the property comprised in the above title [TOGETHER with the [roof and chimney stacks of the whole of —— Court] [entrance] [forecourt] [staircase and lift] of —— Court aforesaid] TOGETHER with the easements rights and privileges mentioned in the First Schedule hereto and EXCEPT AND RESERVING to the Vendor in fee simple the easements rights and privileges mentioned in the Second Schedule hereto and subject to and with the benefit of the covenants and charges intended to be contained in the said Deed of Covenant (*b*)

[2. Statement as to value]

3. The Vendor and the Purchaser hereby apply to the Registrar to enter the said Deed of Covenant in the Charges Register in respect of the titles of the Vendor and the Purchaser respectively

IN WITNESS, *etc.*

THE FIRST SCHEDULE ABOVE REFERRED TO

Easements included in this Transfer

1. The right of protection and subjacent and lateral support

(*b*) In the case of the flats which include a grant of the roof, entrance, forecourt, staircase and lift the grant of the right to use the same will be omitted from the First Schedule, but will be reserved to the Vendor. No rights will, of course, be reserved in the Transfer of the last flat to be sold. The Deed of Covenant will be noted against each title and a copy filed at the Registry.

for the property hereby transferred by the flats retained by the Vendor and the site thereof

2. The right in common with the Vendor and the owners and occupiers for the time being of the flats retained by him to protection from the roof and to use the chimney stacks and to use for the purpose of ingress and egress the entrance staircase and lift of —— Court aforesaid and to pass over and use for the purpose of recreation the forecourt subject to contributing a due proportion (to be determined in the case of dispute by arbitration as provided by the Arbitration Act 1950) of renewing and keeping the same (including the roof and chimney stacks) in repair and condition [and of the rates payable in respect of the forecourt entrance staircase and lift] and (as to the entrance staircase and lift) of cleaning and lighting the same (*c*)

3. The right in common as aforesaid to use the drains sewers pipes (including stack pipes) wires and cables on the property hereby transferred and serving —— Court aforesaid subject to paying a due proportion (to be ascertained as aforesaid) of the cost of renewing repairing and cleansing the same

4. The right to place dustbins in the rear of —— Court aforesaid and to affix aerials and telephone wires to the outer walls thereof

THE SECOND SCHEDULE ABOVE REFERRED TO

Easements reserved to the Vendor

1. The right of subjacent and lateral support and protection for the flats retained by the Vendor by the property hereby transferred

2. Easements rights and privileges for the benefit of the flats retained by the Vendor over the property hereby transferred similar in all respects *mutatis mutandis* to those hereby granted to the Purchaser

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(*c*) The flats will be separately rated and the rates (if any) on the forecourt, entrance, etc., will be payable by the Owner thereof.

II. DEED OF COVENANT BETWEEN PURCHASERS OF FLATS (*a*)

H.M. Land Registry
Land Registration Acts, 1925 and 1936
County: ——
Title No.: ——
Property: ——.

—— day of —— 19—

THIS DEED OF COVENANT is made the —— day of —— 19— BETWEEN the several persons who have signed their names and affixed their seals in the First Schedule hereto annexed and those persons who shall hereafter do so (all of whom are hereinafter referred to as "the Owners") of the one part and A. of etc. (hereinafter called "the Vendor") of the other part Parties.

WHEREAS:— Recitals;

(1) The Vendor is registered at H.M. Land Registry with absolute title of the freehold property —— Court (being the property comprised in the above title) which he has divided into —— flats known or intended to be known as Nos. 1 —— —— Court and which are hereinafter referred to as "the flats" and each of which is hereinafter referred to as "a flat") Vendor's title;

(2) The Vendor intends to sell the flats under a building scheme under which the respective purchasers shall (so far as the law permits) be bound by the restrictive and other covenants contained in the Second Schedule hereto to the intent that the owner of each flat shall be able to enforce the observance and performance of the said covenants by the Owners and occupiers of each of the other flats Scheme for selling flats;

(3) It is intended that each purchaser of a flat and his successors in title to the fee simple from time to time shall sign their names and affix their seals in the second and third columns of the said First Schedule hereto Intention to execute Deed of Covenant.

(4) It is intended that the Transfer of each flat shall (subject Easements included in Transfers.

(*a*) The stamp duty *semble* will be 10s. as the rentcharges would have no market value; but it should be adjudicated.

as hereinafter mentioned) contain a grant of the following rights that is to say—

(a) The right to lateral and subjacent support or protection from the other flats

(b) The right in common with the Owner and occupiers of the other flats to use the entrance staircase and lift giving access thereto and to pass over the forecourt of —— Court aforesaid and to use the same for the purpose of recreation subject to contributing a fair proportion of the cost of renewing and keeping the same in repair and condition [and of the rates payable in respect of the said forecourt entrance staircase and lift] and (as to the entrance staircase and lift) of cleaning and lighting the same

(c) The right in common with the Owners and occupiers of the flats to use the drains sewers pipes (including stack pipes) wires and cables serving —— Court aforesaid subject to paying a fair proportion of the cost of renewing repairing and cleansing the same

(d) The right to place dustbins in the rear of —— Court aforesaid and to affix aerials and telephone wires to the outer walls thereof *and* also a reservation of corresponding rights to the Vendor

Transfer of flats having the entrance, etc.

(5) It is intended that the Transfers of flats Nos. —— —— and —— shall vest in the respective purchasers thereof the said forecourt the roof and chimney stacks the entrance and the staircase and lift respectively subject to the rights of the Owners and occupiers of the other flats as aforesaid

NOW THIS DEED WITNESSETH as follows:—

Mutual Covenants to repair.

1. Each of the Owners hereby covenants with the other Owners and with each of them and also separately with the Vendor for the benefit of their respective property and for their mutual benefit to the intent that the benefit and burden of this covenant shall (so far as the law permits) be annexed to and run with his flat and the easements enjoyed therewith That he the said covenanting party and all persons deriving title through under or in trust for him as purchasers lessees

mortgagees or otherwise shall and will at all times hereafter observe and perform the said covenants contained in the said Second Schedule hereto so far as the same are applicable to his flat (*b*)

Charge of rentcharges.

2. (1) Each of the Original purchasers of the flats who shall purchase their flats within 21 years from the date hereof in consideration of the covenants and charge by the others of them hereby declares that his flat shall stand charged with the payment to each of the others of them of an annual sum in each year equal to one —— part of the cost of repairing the same as provided by paragraph 1 of the said Second Schedule hereto such sum in case of dispute to be determined by arbitration as provided by the Arbitration Act 1950 and to be paid on the first day of January in each year and to be applied for or towards paying the cost of carrying out such repairs by the Owner or Owners doing the same (other than the Owner of the flat primarily liable for such repairs)

(2) Until the purchase by an owner of a flat and execution by him of this Deed the annual sum payable to the Owner thereof shall be payable to the Vendor

(3) In any year in which the Owner of a flat shall duly perform the said covenants contained in the said paragraph 1 of the said Second Schedule hereto the said annual sum charged thereon shall not be payable

(4) The charge hereby created shall not prejudice the right of the Owner to enforce by action the covenants in the said paragraph 1 (*c*)

(*b*) Future Owners will, it is considered, have the benefit of the covenants under s. 56 of the Law of Property Act, 1925.

(*c*) Each rentcharge will be equal to the total cost of the repairs to be done by each Owner divided by the number of flats in the block. The charge will be effective, as the transfer will be deemed to be completed by registration on the date when it is lodged for registration. Payment of rentcharges by the Vendor until sale will not be necessary, as he will remain personally bound by the covenants. But they should be made payable by the purchasers to him, so as to bind the successors of a purchaser who has himself sold before the Vendor has parted with all the flats.

The rentcharges will be legal rentcharges as the amount is ascertainable in each year—*Ex p. Voisey* 21 C.D. 442.

Vendor to perform covenants until sale.

3. The Vendor hereby covenants with the Owners and with each of them (1) that the Vendor will observe and perform the covenants contained in the said Second Schedule hereto so far as the same are applicable to such of the flats as have not been sold and the purchasers whereof have not executed this Deed (2) That the Vendor will not sell any of the flats without requiring the purchaser thereof to execute this Deed

Enforcement of covenants.

4. The Vendor or the Owner of a flat may enforce the observance or performance of any of the said covenants contained in the said Second Schedule hereto against any other Owner or Owners without making any person a party to any action or proceeding for enforcement other than the Owner and Owners who are alleged to have committed the breach complained of

Custody of Deed.

5. The Vendor hereby acknowledges the right of the other Owners and each of them to production and delivery of copies of this Deed the possession whereof is retained by him And hereby undertakes for the safe custody thereof And it is hereby agreed that the same shall be delivered to the purchaser of the last flat to be sold who and whose successors in title shall without charge produce the same for execution from time to time by the Owners

Costs.

6. The costs of and incidental to the preparation and stamping of this Deed shall be paid by the Vendor

IN WITNESS, *etc.*

THE FIRST SCHEDULE ABOVE REFERRED TO

Number of flat	Purchaser's signature	Purchaser's seal	Witness	Date

THE SECOND SCHEDULE ABOVE REFERRED TO

1. Each Owner shall at all times keep the main walls and timbers and the exterior of his flat and all cisterns water and waste pipes therein solely used by him (other than the parts used in common referred to in paragraph 3 to the repair whereof he is to contribute as provided in that paragraph) in good and

substantial repair (for which purpose the other Owners shall permit him to enter on their flats on reasonable notice) And will permit each of the other Owners to enter upon his flat at reasonable times to see the state and condition thereof and of the property over which the Owners have rights in common with him and in default of repair on —— months' notice in writing by him shall permit the other Owner or Owners to enter personally or by their respective agents and repair his flat and also the said property over which the Owners have rights in common doing as little damage as possible and making good all damage (*d*)

2. No Owner shall do or suffer or permit to be done or suffered any act matter or thing upon his flat which may be or become a nuisance or annoyance to any other Owner (the use of a wireless television set or gramophone between the hours of midday and midnight so as not to be audible outside his property not to be considered a nuisance or annoyance within this present covenant) and shall not carry on or suffer to be carried on upon his flat any trade or business and shall not use or suffer the same to be used for any illegal or immoral purpose but shall use the same as a private residence only

3. Each Owner shall pay and contribute as provided in the Transfer of his flat the due proportion of the cost of maintenance and otherwise of the property over which the other Owners have rights in common with him

4. No Owner shall deposit rubbish except in his own dustbin and shall not hang out washing

5. No Owner shall alter or suffer to be altered the external plan and elevation of his flat without the consent of all the other Owners or decorate the exterior thereof except in a manner agreed by all the Owners and shall not erect or place or suffer to be erected or placed any temporary or permanent building or erection or hoarding on the forecourt of —— Court or obstruct the common entrance lift and staircase

(*d*) The right of entry, it is submitted, creates only a personal licence not within the perpetuity rule—*Smith* v. *Colbourne* [1914] 2 Ch. 533. But it will bind each Owner from time to time when he executes the Deed.

6. No Owner shall transfer mortgage or charge the fee simple of his property without requiring the transferee (in the case of a transfer) to execute this Deed or (in the case of a Mortgage or Charge) without requiring the mortgagee or chargee to enter into a covenant (which shall enure for the benefit of the other Owners) with the party mortgaging or charging to observe and perform the covenants herein contained and (if he shall foreclose) to execute this Deed and not to transfer the fee simple or create any sub-mortgage without requiring the transferee or sub-mortgagee to perform the obligations imposed by this clause And if any Owner mortgagee sub-mortgagee or chargee shall commit a breach of this present covenant the right of the owner of that flat to enforce the covenants by the other Owners shall forthwith cease.

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EDITORIAL NOTE

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